1107.

SUPREME COURT OF THE UNITED STATES.

No. 129.

WILLIAM W. WOODWORTH, ADMINISTRATOR OF WILLIAM WOODWORTH, DECEASED, AND E. V. BUNN, ASSIGNEE OF WILLIAM W. WOODWORTH, COMPLAINANTS AND APPELLANTS,

vs.

JAMES, BENJAMIN, AND ALPHEUS WILSON.

APPEAL FROM CIRCUIT COURT U. S. FOR KENTUCKY.

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J. & G. S. Gideon, printers.

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Preamble.

Pleas before the honorable Thomas B. Monroe, one of the judges of the 8th circuit court of the United States, in and for the Kentucky district, holden at Frankfort, at the June adjourned term, 1845.

Be it remembered, that heretofore, to wit, on the 28th day of July, A. D. 1843, came William W. Woodworth, administrator of William Woodworth, deceased, and E. V. Bunn, assignee of W. W. Woodworth, by Wm. Browne and Loughborough & Field, esqrs., their attornies, into the clerk's office of the court aforesaid, and filed the following bill in chancery, to wit:

Woodworth & Bunn,
vs.
Jas. Wilson, Benj. Wilson, and A. Wilson. } *In equity.*

Circuit court of the United States for the district of Kentucky.

William W. Woodworth, administrator of William Woodworth, deceased, and E. V. Bunn, assignee of W. W. Woodworth, administrator, &c., plaintiffs,
against
James Wilson, Benjamin Wilson, and Alpheus Wilson, defendants. } *In equity.*

Bill.

To the judges of the circuit court of the United States for the district of Kentucky:

William W. Woodworth, administrator of William Woodworth, dec'd, of ——, in the State of New York, and a citizen of said State, and E. V. Bunn, of the city of Louisville, and county of Jefferson, in the State of Kentucky, and a citizen of said State, bring this their bill against James Wilson, Benjamin Wilson, and Alpheus Wilson, of the city of Louisville, and county of Jefferson, in the State of Kentucky, and citizens of said State; and thereupon your orators complain and say, that on or about the 4th day of December, 1828, one William Woodworth, then in full life, but since dead, was the inventor of a certain improvement or machine for planing, grooving and tonguing boards and plank and other materials; and being the inventor thereof, applied to the proper department of the Government of the United States for a patent to be issued to him, according to the laws of Congress made and provided in such case, and paid the sum of thirty dollars; and having in all other respects complied with the laws in such case provided, obtained letters patent from said United States, under the seal thereof, duly signed, and dated the 27th day of December, 1828, and in all

respects in due form of law, and duly executed, as will appear by said letters patent herein set forth in substance and effect as follows:

Certificate of H. L. Ellsworth, Commissioner of Patents, to letters patent.

"The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy of letters patent granted to William Woodworth for an improvement in the method of plaining, tonguing, grooving, and cutting into mouldings, or either, plank, boards, or any other materials, and for reducing the same to an equal width and thickness, &c., &c., dated the 27th day of December, 1828; accorded anew on the 20th day of August, 1842; and extended for seven years on the 16th day of November, 1842.

In testimony whereof, I, Henry L. Ellsworth, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-third day of January, in the [L. S.] year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

(Signed) H. L. ELLSWORTH.

Letters patent to W. Woodworth.

The United States of America, to all to whom these letters patent shall come:

Whereas William Woodworth, a citizen of the United States, hath alleged that he has invented a new and useful improvement in the method of planing, tonguing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness; and also for facing and dressing brick, and cutting mouldings on, or facing, metallic, mineral, or other substances, which improvements he states have not been known or used before his application; hath made oath that he does verily believe that he is the true inventor or discoverer of the said improvement; hath paid into the Treasury of the United States the sum of thirty dollars, delivered a receipt for the same, and presented a petition to the Secretary of State, signifying a desire of obtaining an exclusive property in the said improvements, and praying that a patent may be granted for that purpose. These are, therefore, to grant, according to law, to the said William Woodworth, his heirs, administrators, or assigns, for the term of fourteen years from the 27th of December, 1828, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of the said William Woodworth himself, in the schedule hereto annexed, and is made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed. Given under my hand, at the city of Washington, this 27th day of December, in the year of our Lord 1828, and of the independence of the United States of America the fifty-third.

[L. S.]

(Signed) J. Q. ADAMS.

By the President:

(Signed) H. CLAY,
Secretary of State.

Certificate of Wm. Wirt, Attorney Gen'l U. States.

City of Washington, to wit:

I do hereby certify, that the foregoing letters patent were delivered to me on the 27th day of December, in the year of our Lord 1828, to be examined; that I have examined the same, and find them conformable to law; and I do hereby return the same to the Secretary of State, within fifteen days from the date aforesaid, to wit, on this 27th day of December, in the year aforesaid.

WM. WIRT,
Attorney General of the United States.

Schedule.

The schedule referred to in these letters patent, and making part of the same, containing a description, in the words of the said William Woodworth himself, of his improvement in the method of planing, tonguing, grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness; and also for facing and dressing brick, and cutting mouldings on, or facing metallic, mineral, or other substances.

The plank, boards, or other material, being reduced to a width by circular saws or friction wheels, as the case may be, is then placed on a carriage, resting on a platform, with a rotary cutting wheel in the centre, either horizontal or verticle. The heads or circular plates, fixed to an axis, may have one of the heads moveable, to accommodate any length of knife required. The knife fitted to the head with screws or bolts, or the knives or cutters for moulding fitted by screws or bolts to logs, connecting the heads of the cylinder, and forming with the edges of the knives or cutters a cylinder. The knives may be placed in a line with the axis of the cylinder, or diagonally. The plank, or other material resting on the carriage, may be set so as to reduce it to any thickness required; and the carriage, moving by a rack and pinion, or rollers, or any lateral motion, to the edge of the knives or cutters on the periphery of the cylinder or wheel, reduces it to any given thickness. After passing *and* reducing wheel, it then approaches, if required, two revolving cutter wheels, one for cutting the groove, and the other for cutting the rabits that form the tongue; one wheel is placed directly over the other, and the lateral motion moving the plank, or other material,

between the grooving and rabiting wheels, so that one edge has a groove cut the whole length, and the other edge a rabit cut on each side, leaving a tongue to match the groove. The grooving wheel is a circular plate fixed on an axis, with a number of cutters attached to it to project beyond the periphery of the plate, so that when put in motion it will perform a deep cut or groove, parallel with the face of the plank or other material. The rabiting wheel, also of similar form, having a number of cutters on each side of the plate, projecting like those on the grooving wheel, cuts the rabit on the side of the edge of the plank, and leaves the tongue or match for the groove. By placing the planing wheel axis and cutter knives vertical, the same wheel will plane two planks or other material in the same time of one, by moving the plank or other material opposite ways, and parallel with each other against the periphery of the planing or moulding wheel. The groove and tongue may be cut in the plank or other material at the same time, by adding a grooving and rabiting wheel.

Said William Woodworth does not claim the invention of circular saws or cutter wheels, knowing they have long been in use; but he claims, as his invention, the improvement and application of cutter, or planing wheels, to planing boards, plank, timber, or other material; also his improved method of cutters for grooving and tonguing, and cutting mouldings on wood, stone, iron, metal, or other material, and also for facing and dressing brick; as *all* the wheels may be used single and separately for moulding, or any other purpose before indicated. He also claims, as his improved method, the application of circular saws for reducing floor plank, and other materials, to a width.

Dated Troy, December 4th, 1828.

WILLIAM WOODWORTH.

HENRY EVERTS, } Witnesses.
D. S. GLEASON, }

Extension of patent for seven years.

Whereas, upon the petition of William W. Woodworth, administrator of the estate of William Woodworth, deceased, for an extension of the within patent, granted to William Woodworth, deceased, on the 27th day of December, 1828, the board of commissioners, under the 18th section of the act of Congress, approved the 4th day of July, 1836, entitled "An act to promote the progress of useful arts, to repeal all acts and parts of acts heretofore made for that purpose, did, on the 16th day of November, 1842, certify that the said patent ought to be extended. Now, therefore, I, Henry L. Ellsworth, Commissioner of Patents, by virtue of the power vested in and by said 18th section, do renew and extend said patent, and certify that the same is hereby extended for the term of seven years from and after the expiration of the first term, viz: the 27th day of December, 1842; which certificate of said board of commissioners, together with this certificate of the Commissioner of Patents, having been duly entered of record in the Patent Office, the said patent now has the same effect in law as though the time had been originally granted for the term of twenty-one years.

In testimony whereof, I have caused the seal of the Patent
[L. S.] Office to be hereunto affixed, this 16th day of November, 1832.

HENRY L. ELLSWORTH,
Commissioner of Patents.

The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy of the original on file in this office.

In testimony whereof, I, Henry L. Ellsworth, Commissioner of Patents, have caused the seal of the Patent Office to be
[L. S.] hereunto affixed this 7th day of March, in the year of our Lord 1843, and of the independence of the United States the 67th.

H. L. ELLSWORTH.

The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify, that the annexed is a true copy of the records in this office.

In testimony whereof, I, Henry L. Ellsworth, Commissioner of Patents, have caused the seal of the Patent Office to be here-
[L. S.] unto affixed, this third day of February, in the year of our Lord 1843, and of the independence of the United States the 67th.

HENRY L. ELLSWORTH.

Certificate of extension of patent.

In the matter of the application of William W. Woodworth, administrator on the estate of William Woodworth, deceased, in writing to the Commissioner of Patents for the extension of the patent for a new and useful improvement in the method of planing, tonguing, and grooving, and cutting into mouldings, or either, plank, boards, or any other material, and for reducing the same to an equal width and thickness; and also for facing and dressing brick, and cutting mouldings on, or facing, metallic, mineral, or other substances, granted to the said William Woodworth, deceased, on the 27th day of December, 1828, for fourteen years from said 27th day of December. The applicant having paid into the treasury the sum of forty dollars, and having furnished to the undersigned a statement in writing, under oath, of the ascertained value of the invention, and of the receipts and expenditures thereon, sufficiently in detail to exhibit a true and faithful account of loss and profits in any manner accruing to said patentee, from or by reason of said invention; and notice of said application having been given by the Commissioner of Patents, according to law, said board met at the time and place appointed, viz., at the Patent Office, on the 1st September, 1842; and their meetings having been continued, by

regular adjournments, until the 16th day of November, 1842, they on that day heard the evidence produced before them, both for and against the extension of said patent; and do now certify, that, upon hearing of the matter, it appears, to their full and entire satisfaction, having due regard to the public interest therein, that it is just and proper that the term of said patent should be extended, by reason of the patentee, without neglect on his part, having failed to obtain from the use and sale of his invention a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use.

DANIEL WEBSTER,
Secretary of State.
CHAS. B. PENROSE,
Solicitor of the Treasury.
HENRY L. ELLSWORTH,
Commissioner of Patents.

Washington City Patent Office, November 16th, 1842.

And your orator further shews unto your honor, that after the said William W Woodworth, administrator of William Woodworth, deceased, the patentee aforesaid, became invested with all and singular the exclusive rights conferred by the extension of said patent within and throughout the United States of America and the Territories thereof; and while the said William W. Woodworth, administrator of William Woodworth, was possessed thereof, he, the said William W. Woodworth, in conformity to the statutes in such case made and provided, did, on the second day of January, in the year 1843, execute a certain instrument of disclaimer, whereof the following is a copy; and which said disclaimer is duly entered on file, and recorded in the Patent Office at Washington, as will verily appear in a certified copy of the said disclaimer, which your orator is ready to produce.

Disclaimer of W. W. Woodworth.

To all men to whom these presents shall come:

I, William W. Woodworth, of Hyde Park, in the county of Duchess, and State of New York, esquire, as I am administrator of the goods and estates which were of William Woodworth, deceased, hereinafter named, send greeting:

Whereas letters patent, bearing date the 27th day of December, in the year of our Lord 1828, were granted by the United States to William Woodworth, now deceased, for an improvement in the method of planing, tonguing, grooving, and cutting into mouldings, or either, boards and plank, or any other materials, and for reducing the same to an equal width and thickness; and also for facing and dressing brick, and cutting mouldings, or facing, metallic, mineral, or other substances.

And whereas, before the term of fourteen years, for which the said letters patent were granted, had fully expired, such proceedings were had that, pursuant to the act of Congress in such case made and pro-

vided, the said letters patent were renewed and extended for the term of seven years from and after the expiration of the said fourteen years; and to the certificate granting the said extension and renewal unto me, in my said capacity, bearing date on the 16th day of November now last past, and which is duly recorded according to the act of Congress in that behalf, reference is hereby made, as showing my title and interest in and to the said letters patent.

And whereas the said William Woodworth, through inadvertence, accident, or mistake, in his application for letters patent, made his specification of claim too broad, in this way: that he, the said William Woodworth, claimed as his improved method the application of circular saws, for reducing floor plank and other materials to width, of which he was not the original and first inventor; and whereas some material and substantial part of the patented thing was justly and truly the invention and improvement of the said William Woodworth.

Now, therefore, know ye, that I, the said William W. Woodworth, in my capacity aforesaid, and as the person to whom the said certificate was granted as aforesaid, have disclaimed, and do, by these presents, disclaim all and any exclusive right, property, or interest of, in, or to the application of circular saws, for reducing floor planks, or other materials, to a width, by reason of the aforesaid letters patent, and to the aforesaid renewal or extension thereof.

In testimony whereof, I have hereto, in my capacity aforesaid, set my hand and seal this 2d day of January, 1843.

WILLIAM W. WOODWORTH,
Adm'r of W. Woodworth, deceased.

Executed in presence of—
CHARLES W. EMESN,
B. R. CURTIS.

All of which is duly recorded in the Patent Office of the United States, as will more fully appear by a copy of the record, duly authenticated, and ready to be produced, as this honorable court may require.

And your orators further shew unto your honors, that, upon due application made for that purpose, such proceedings were had, in pursuance of the law in such case made and provided, that the said patent was duly and legally extended for the term of seven years, from and after the expiration of said original patent, as will more fully appear by the records of said Patent Office, in due form of law, and duly authenticated, and ready to produce in court, as this honorable court may require.

And your orators further shew and state, that the said William Woodworth, deceased, and his assignees, immediately after the obtention of the said original patent, erected and put in operation many machines in different parts of the country, whereby a very large quantity of plank and boards have been planed, tongued, and grooved, and fitted for use, to the very great saving of labour, and to the great benefit of the public. And, amongst others, they stated that one of the said ma-

chines was put in operation in the city of Louisville by Smith & Keats, and your orator Bunn became purchaser of the right of the patent and machine aforesaid from said Smith & Keats, at great cost, to wit, of $5,000 00, and more; and continued, in virtue of said assignment, to use the same during the existence of said original patent; and they state that on the 23d day of June, 1843, your orator Bunn, for valuable consideration, obtained from said W. W. Woodworth, administrator as aforesaid, the exclusive right to make, use, and vend machines for planing, &c., under the extension of the said patent to Woodworth within the limits of the city of Louisville, and in the district of country ten miles around said city.

They further allege and charge, that on the 30th day of June, 1843, the said Bunn, who had so purchased from said Woodworth's administrator, sold the right to use said machines, made under and according to the patent of Woodworth, to be used in the town of New Albany, in the State of Indiana, to James Wilson, the said town of New Albany being within the district of ten miles around Louisville. Your orators further allege and charge, that the said Wilson, well knowing, as they believe, of the existence and validity of the patent so granted to the said William Woodworth, and so assigned to your orator Bunn, for the city of Louisville, and his long continued use of the same, and of the renewal or extension of said patent to William W. Woodworth, administrator as aforesaid, and of the purchase of said right, so extended, by your orator Bunn, and sale of said right to the defendant, James Wilson, to be used in New Albany, in defiance of the rights of your orators, about the —— day of ——, 1843, have made, or caused to be made, set up and put in operation in the city of Louisville, a machine for planing, tonguing, and grooving plank, board, &c.; which machine is, in all its material parts, substantially like and upon the plan of the machine so as before mentioned, invented, made, and put in operation by said Woodworth, and described in the said letters patent to him, and so extended to his administrator, W. W. Woodworth, and so sold to your orator Bunn, as before stated; and the said defendants, or some of them, persist in using the same, and refuse to desist, whereby said defendants, or some of them, have made great profit, and to the great injury of your orators; and said defendants, as your orators have heard, threaten to continue to use said machine, to the great injury of your orators; the amount of which profits, so made, your orators do not know, but charge them to be from $20 to $30 per day.

They further state that the said William Woodworth was, to the best of their knowledge and belief, the true and original inventor and discoverer of the machine so patented to him, and so extended to his administrator; and that the same had not, to the best of their knowledge and belief, been in use before his invention and discovery.

In tender consideration whereof, and as your orators are entitled to relief by the aid of a court of equity. To the end, therefore, that said James Wilson, Benjamin Wilson, and Alpheus Wilson, be made defendants to this bill, and answer the same, and say if, to the best of

their knowledge and belief, the machine so used by them, or some of them, is not substantially like and on the same plan as that of Woodworth.

That thee discover and set forth how long the said machine has been worked, and what quantity of plank, board, and other material, they have dressed and prepared with said machine; how much per day, and of what value, was the said dressing and preparing said materials; and that said defendants be restrained from any further use thereof; and that your honors will grant to your orators all such other and future relief, and make any other or further order which the nature of this case and the principles of equity may require. May it please, &c.

LOUGHBOROUGH & FIELD, and
BROWNE,

Attorneys for plaintiffs.

United States of America,
8th circuit and district of Kentucky:

I, William S. Pilcher, commissioner, appointed by the court, in and for the said circuit and district, to take affidavits, &c., and acting as such, certify, that E. V. Bunn, complainant in the foregoing bill in equity, and who to me is personally known, came before me, was duly cautioned and sworn, and thereupon saith, that the facts therein stated, of his own knowledge, are true, and those stated on the information of others he believes to be true, and subscribed his name to this affidavit in my presence.

E. V. BUNN.

Given under my hand, at Louisville, in said circuit and district, this 25th day of July, 1843.

W. S. PILCHER, *Com'r.*

And on the same day on which the foregoing bill was filed, to wit, on the 28th day of July, 1843, the complainant also filed the following notice, to wit:

Notice of motion for injunction.

Circuit court of the United States for the district of Kentucky.

Sirs: Please take notice, that I intend to move this honorable court on Friday, the 28th instant, before the honorable judge for the district of Kentucky, at 4 o'clock in the evening of that day, or as soon thereafter as counsel can be heard, at the United States circuit court room, in the city of Frankfort, that a writ of injunction issue out of and under the seal of this honorable court, and to be directed to you, the said J. Wilson, B. Wilson, and A. Wilson, your agents, attorneys, solicitors, counsellors, and servants therein and thereby, under a heavy penalty therein to be inserted, commanding and firmly enjoining upon you, the said Wilsons, and them and each of them, absolutely to desist from planing, tonguing and grooving, or either, planks, board, or other materials, within the city of Louisville, or the distance of ten miles thereof, except the city of New Albany, &c., by means of machines con-

structed upon the principle and plan specified and described in the schedule annexed to the letters patent issued to William Woodworth, bearing date the 27th day of December, 1828, and extended on the 27th day of December, 1842; and from violating and infringing upon the said patent in any way, within the said city of Louisville and limits aforesaid, except so far as relates to the occupation and application of circular saws for reducing floor planks or other materials to an equal width and thickness, until the further order of this honorable court; which said motion will be founded upon a bill of complaint, which has been duly sworn to by said E. V. Bunn, one of the said complainants.

Yours, &c. BROWNE, and
LOUGHBOROUGH & FIELD,
Solicitors for Complainants.

To James Wilson, Benjamin Wilson and Alpheus Wilson.
Dated July 25th, 1843.

Affidavit of service of notice on J. and B. Wilson.

United States of America, 8th circuit, Kentucky district:

I, William S. Pilcher, commissioner to take affidavits, &c., duly commissioned and acting as such, certify, that John M. Delph, a constable, in and for the county of Jefferson, and State of Kentucky, and who is personally known to me, came before me, in my office, in the city of Louisville, and being duly cautioned and sworn by me, on this day, doth depose and say, that he executed the within notice on the within James Wilson, by delivering to him a true copy thereof at his planing machine shop in the city of Louisville, and executed it on Benjamin Wilson by reading and explaining it to him, fully making known to him the meaning and object of the same. That he executed said notice on said James Wilson on the 25th July, 1843, and on said Benjamin Wilson on this day, and that said Alpheus Wilson is not found.

And I certify that said Delph subscribed this affidavit in my presence, and that the same was read over to him by me.

J. M. DELPH, *C. J. C.*

Given under my hand, at Louisville, in the said circuit and district, this 26th day of July, 1843.

W. S. PILCHER, *Commissioner.*

And on the same day, to wit, on the 28th day of July, 1843, the complainants, by their counsel, filed the following order for injunction in this cause, to wit:

Order for injunction.

WOODWORTH & BUNN
vs.
JAS., BENJ., & ALPHEUS WILSON.

If the complainants shall execute and file, in the clerk's office of this court, their bond, with one or more sufficient sureties, in the penalty of two thousand dollars, payable to the defendants, with condition, that in

the event of the discharge of the interlocutory order this day made on their bill against the defendants, enjoining them, on certain conditions, from the further use of the machine mentioned in the bill, and charged to have been constructed and used by the defendants in violation of the patent right originally granted by the U. States to William Woodworth, and now held by the complainants, within the territorial limits in the bill stated, or of their, the complainants, succeeding on their bill in obtaining a perpetual injunction against the defendants' use of said machine, as by them prayed in their bill, that they, the obligors, will pay to the defendants all such damages and costs as they shall be subjected to and suffer in consequence thereof, and of the peremptory injunction provided for therein in case it shall occur; this order will be thereupon entered and issued.

It is ordered, that unless the defendants do, within fifteen days after notice hereof, execute and file, in the office of this court, their bond, with one or more sufficient securities, in the penalty of two thousand dollars, payable to the complainants, with condition, that in the event of a decree being rendered for the complainants on their bill, perpetually enjoining the defendants from the use of the machine in the bill mentioned and described, within the territorial limits therein stated, within which the complainant asserts a full and exclusive right to construct, vend, and use said machine, as the assignee of Wm. Woodworth, the original inventor and patentee of the U. States, that they, the obligors, will pay to the complainants all such damages and costs as will be awarded by this court, for the violation of the right of the complainants by the defendants, in the using of said machine, or which may be recovered in any action at law the court may direct the complainant to institute for the purpose of testing their right; and that they, the defendants, shall, at each term of this court, or oftener if required, report, on oath, an account of all the work performed by said machine, with such specifications as may be by the court required, for the purpose of showing the real profits of its operations; that they, the defendants, shall desist from the further use and employment of said machine, within the said territorial limits in the bill stated, and an injunction shall issue accordingly.

The security in this bond, as well as that required of the complainants, may be approved by either the commissioner of this court at Louisville, or the clerk of this court, and the bond authenticated by the attestation of either of them.

THOS. B. MONROE,

July 28th, 1843. *J. W. S. Dt. Ky.*

And afterwards, to wit, on the 4th day of August, 1843, the complainants, by their counsel, filed, in the clerk's office of said court, the following injunction bond, to wit:

Injunction bond.

Know all men by these presents, that we, William W. Woodworth, administrator of William Woodworth, dec'd, and E. V. Bunn, assignee

of W. W. Woodworth, administrator, &c., principals, and Jesse Vansickles, surety, are held and firmly bound unto James Wilson, Benjamin Wilson and Alpheus Wilson, in the just and full sum of two thousand dollars, for the payment of which, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents. Signed with our hands, and sealed with our seals, this 3d day of August, 1843.

The condition of the above obligation is such, that whereas the above bound W. W. Woodworth, administrator of W. Woodworth, and E. V. Bunn, have filed their bill in chancery, in the circuit court of the United States for the district of Kentucky, against the said James, Benjamin, and Alpheus Wilson, and on the said bill the Hon. T. B. Monroe, one of the judges of said court, on the 28th July, 1843, made an interlocutory order, enjoining the said Wilsons, defendants in the said bill, on certain conditions, from the further use of a certain machine mentioned in the said bill, and charged therein to have been constructed and used by the defendants, in violation of the patent right originally granted by the United States to W. Woodworth, and now held by the complainants, within the territorial limits in the bill stated.

Now, therefore, if the obligors aforesaid, in this bond, shall, in the event of the discharge of the said interlocutory order, or of their, the complainants not succeeding, on their bill, in obtaining a perpetual injunction against the defendants' use of the said machine, as by them prayed in their bill, pay to the defendants all such damages and costs as they shall be subjected to and suffer in consequence thereof, and of the peremptory injunction provided for therein in case it shall occur, then the above obligation to be void, otherwise to remain in full force and virtue.

E. V. BUNN, [SEAL.]
JESSE VANSICKLES. [SEAL.]

Attest: W. S. PILCHER, *Com'r.*

United States of America, eighth circuit, Kentucky district:

Jesse Vansickles this day made oath before me, that he is able to pay the penalty of the foregoing bond, which is $2,000, after the payment of all his just debts.

JESSE VANSICKLES.

Attest: W. S. PILCHER, *Com'r.*

I, William S. Pilcher, commissioner of the United States Kentucky district court, at Louisville, in said district, certify that I approve the security in said foregoing bond, Jesse Vansickle, a citizen of Louisville.

Witness my hand this 3d day of August, 1843.

W. S. PILCHER, *Commissioner.*

Subpœna.

Subpœna in chancery and injunction, viz:

[L. S.] The United States of America, to the marshal of the Kentucky district, greeting:

You are commanded to summon James Wilson, Benjamin Wilson,

and Alpheus Wilson to appear before the judges of our eighth circuit court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in September next, to answer a bill in chancery, exhibited against them in our said court by William W. Woodworth, administrator of William Woodworth, dec'd, and E. V. Bunn, assignee of W. W. Woodworth, administrator, &c., and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, Roger B. Taney, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 4th day of August, A. D. 1843, and in the 68th year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Memo.—The above named defendants must enter their appearance to this suit on or before the first Monday in September next, otherwise the bill will be taken for confessed.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Injunction.

Memo.—Unless the within named defendants do, within fifteen days after notice hereof, execute and file, in the office of this court, their bond, with one or more sufficient sureties, in the penalty of two thousand dollars, payable to the complainant, with condition that, in the event of a decree being rendered for the complainants on their bill, perpetually enjoining the defendants from the use of the machine in the bill mentioned and described, within the territorial limits therein stated, within which the complainants assert an exclusive right to construct, vend, and use said machine, as the assignees of William Woodworth, the original inventor and patentee of the U. States, that they, the obligors, will pay to the complainants all such damages and costs as will be awarded by this court for the violation of the rights of the complainants by them, the defendants, in the using of said machine, or which may be recovered in any action at law the court may direct the complainants to institute for the purpose of testing their right; and that they, the defendants, shall, at each term of this court, or oftener if required, report, on oath, an account of all the work performed by said machine, with such specifications as may be by the court required for the purpose of showing the neat profits of its operations; that they, the defendants, shall desist from the further use and employment of said machine, within the said territorial limits in the bill stated, and an injunction shall issue accordingly.

The surety in the bond may be approved by either the commissioner of this court, at Louisville, or the clerk of this court, and the bond authenticated by either of them.

By order of the judge.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

Marshal's return.—Marshal's return, viz:

Executed on Benjamin Wilson and Alpheus Wilson, at their planing machine in Louisville, on the 7th day of August, 1843.

HORATIO BALL, *Dep'y*,
For W. B. BLACKBURN, Jr., *M. K. D.*

Executed on James Wilson, in Louisville, on the 11th day of August, 1843.

HORATIO BALL, *Dep'y*,
For W. B. BLACKBURN, Jr., *M. K. D.*

The following is the assignment and transfer from Wm. W. Woodworth, administrator, &c., to E. V. Bunn, filed by the complainant with his bill, to wit:

Transfer from Woodworth, adm'r, &c., to E. V. Bunn.

Whereas William Woodworth, now deceased, did, in his lifetime, obtain letters patent, issued under the great seal of the United States, bearing date the 27th day of December, 1828, giving and granting to him, the said Woodworth, his heirs, administrators and assigns, for and during the term of fourteen years from the date of the said letters patent, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, a certain improved method for planing, tonguing, grooving, and cutting into mouldings, or either plank, boards, or any materials, and for reducing the same to an equal width and thickness; and also for facing and dressing brick, and cutting mouldings in, or facing, metallic, mineral, or other substances.

And whereas William W. Woodworth, administrator of said William Woodworth, hath applied and obtained an extension of said letters patent, for the term of seven years, from and after the expiration of said patent, to wit, the 27th day of December, 1842, pursuant to an act of Congress in such case made and provided, and hath a certificate of said extension annexed to said patent, signed by the commissioner of patents under the great seal of the Patent Office of the United States, and dated November 16th, A. D. 1842. And whereas E. V. Bunn, of the city of Louisville, in the State of Kentucky, hath fully viewed, examined, and considered for himself the said improvement, and, of his own motion hath requested and desired the said William W. Woodworth, adm'r of said William Woodworth, dec'd, to give a license and permission, in writing, for constructing and using machines on the said improved plan in the city of Louisville aforesaid, including the district of country within ten miles of said city, and in no other city, town, or place, in the United States, or the territories thereof, on the conditions hereinafter mentioned; and have offered to pay him the sum of fifteen hundred dollars for such license and consent in writing; with which request and desire the said William W. Woodworth, administrator of Wm. Woodworth, dec'd, has agreed to comply.

Now, know all men by these presents, that the said W. W. Woodworth,

administrator of Wm. Woodworth, dec'd, in consideration of the said sum of fifteen hundred dollars, secured to be paid to him the said Wm. W. Woodworth, administrator of Wm. Woodworth, deceased, doth hereby give his full consent and permission in writing, and license to the said E. V. Bunn, and to his executors, administrators, and assigns, to construct and use, during the said extension of the aforesaid patent, ten planing machines on the improved plan aforesaid, within the city of Louisville, and including the district of country within ten miles of said city, and in no other city, town, or place, within the United States or the territories thereof; and also, within said limits, to dispose of the plank or other things dressed and prepared in the said machines; and he doth also hereby authorize and empower the said E. V. Bunn, and his executors, administrators, and assigns, in the name of said Woodworth, administrator aforesaid, or in his own name, to commence and prosecute to final judgment any suit or suits against any person or persons who shall construct or use the said improvements, within the said limits, contrary to the true meaning and intent of the aforesaid letters patent, and the extension thereof, and the laws in such case made and provided; and to receive for his own benefit, and at his own proper costs and charges, any penalty or penalties which he may recover. And, in consideration of the premises, it is hereby covenanted and agreed, by and between the said William W. Woodworth, administrator of Wm. Woodworth, dec'd, his executors, administrators, and assigns of the one part, and the said E. V. Bunn, his executors, administrators, and assigns of the other part, as follows, viz:

1st. That the said Wm. W. Woodworth, administrator of Wm. Woodworth, dec'd, his executors or administrators, during the terms aforesaid, shall not, nor with themselves, construct, or use, nor give their license, consent, and permission to any other person than the said E. V. Bunn, to construct or use, the improved planing machine aforesaid with the said city of Louisville, or within the district of country within ten miles of said city.

2d. That the said E. V. Bunn, his executors, administrators, and assigns, shall not nor will during the times aforesaid construct or use more than ten machines as aforesaid within the limits above mentioned, nor construct or use any such machines, nor sell and dispose of any plank, or other thing, dressed and prepared in such machine, any where else within the United States and the territories thereof; it being declared to be the true intent and meaning of these presents that not more than ten planing machines in the whole shall be constructed and used by virtue of the license, consent, and permission herein given.

3d. It is understood and agreed that the said William W. Woodworth has entered and filed at the Patent Office, at Washington, a disclaimer of that part of said patent for the planing machine which claims the reduction of materials, boards, and plank, to an equal width and thickness by circular saws; and a lien is retained and renewed on this assign-

ment for the security of the payment of the fifteen hundred dollars—the consideration and purchase money to be paid to said Woodworth.

Signed, sealed, and delivered this 21st day of June, 1843.

W. W. WOODWORTH, [L. S.]
Administrator of W. Woodworth, dec'd.

The words "*to him in hand paid by the said*" were erased, and the word "*ten*" and the words "*in the name of said Woodworth, adm'r aforesaid, or in his own name,*" were interlined before the execution of the foregoing instrument in presence of D. E. Sickles.

Certificate of acknowledgment.

City of New York, ss:

On this nineteenth day of July, A. D. 1843, before me, personally appeared William W. Woodworth, known to me to be the administrator of Wm. Woodworth, dec'd, and to be the same person described in, and who executed, the foregoing instrument, and acknowledged to me that he executed the same.

D. E. SICKLES,
Commissioner of Deeds.

State of New York, city and county of New York, ss:

I, Nathaniel Jarvis, clerk of the city and county of New York, do hereby certify, that D. E. Sickles, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a commissioner of deeds for said city and county, dwelling in the said city, commissioned, and sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such commissioner, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said county, the 20th day of July, 1843.

[L. S.]

NATHANIEL JARVIS, *Clerk.*

Endorsed as follows, viz:

"Received of E. V. Bunn five hundred dollars in cash, and five hundred dollars in notes of J. H. Wilson, as payment on the within; and when the said Bunn shall pay the 3 promissory notes given by him at 6, 12, and 18 months, it will be in full for the consideration of the within payments.

W. W. WOODWORTH,
Administrator of W. Woodworth, dec'd.
By JAS. G. WILSON, *his att'y.*

And on the same day, to wit, on the 28th day of July, 1843, the following affidavits were filed by the complainants with their bill, to wit:

Affidavit of Dan'l Smith.

United States of America, 8th circuit, Kentucky district, to wit:

The affidavit of Daniel Smith, Felix Smith, and H. Cood, taken

for the purpose of being read on an application to the judge of the United States court in and for the said circuit and district, for an injunction in the case of E. V. Bunn, &c., against James Wilson, Benjamin Wilson, and Alpheus Wilson, on the 25th day of July, 1843, at the city of Louisville, in the State of Kentucky. The deponents being of lawful age, personally known to the undersigned, and solemnly sworn and cautioned to state the whole truth, depose and say:

Affidavit of Daniel Smith.

The affiant, Daniel Smith, produced on the part of the applicants, says he has resided in Louisville, in the said circuit and district, for many years; that he has been about eleven years, until the year 1841, engaged in the lumber trade, in partnership with one George Keats, now deceased; that he understands the principles of mechanics; that, whilst so engaged in said firm, they purchased from Lewis Sanders William Woodworth's patent right in and to an improved planing machine, to be used in the city of Louisville, and put the same in operation about the year 1832, and continued to use it until about the year 1840, when they sold out their right in and to $\frac{2}{3}$ of said patent to E. V. Bunn, who continued its operation until the expiration of the patent of said Woodworth. Mr. Bunn had, before his purchase of the $\frac{2}{3}$ interest in said patent for Louisville, owned with Smith & Keats one-third part interest in the same. Affiant has never, until recently, heard the validity of Woodworth's patent questioned. He has seen a planing machine put in operation, in Louisville, by James Wilson or said James and Benjamin Wilson & Sons; which machine is, in the opinion of affiant, from an actual inspection thereof, substantially on the same plan as the one for which the patent was granted to the said Woodworth. The said Wilsons are now running said machine; and affiant verily believes said machine, and the use thereof, an infringement of the patent granted to said Woodworth. The patent right to said machine cost this affiant and Keats about $6,000, and he thinks the said Bunn gave about the same price for the entire interest in proportion to the time he had it. The running of said machine by the Wilsons does, in the opinion of affiant, greatly injure and damage said Bunn.

And further affiant saith not.

DAN'L SMITH.

Affidavit of Felix Smith.

The deponent, Felix Smith, produced on behalf of applicants, says: He has resided in the city of Louisville, in the circuit and district aforesaid, ever since the fall of 1829; that he, like Daniel Smith, has, until the last three years, been engaged in the lumber business; he states that he has some knowledge of machinery, and can tell, on examination, when the principal machinery is the same, and in ordinary cases in what it differs. Affiant knows that Smith & Keats bought the right to the machine now owned and worked by Bunn from Lewis

Sanders; and, at the time of the purchase, affiant lived with Smith & Keats as salesman in the lumber yard, and understood from all the parties that it was a machine patented to and in the name of William Woodworth. It seems that Sanders had bought the right, sold to Smith & Keats, of Woodworth; they paid, as I understood, $6,000 for the right in Louisville. Bunn afterwards bought from Smith & Keats, some three years or more ago, and now runs the machine. Affiant has examined a machine in operation in Louisville, belonging to James Wilson, Benjamin Wilson, and Alpheus, all or some of them, and verily believes that said machine is on precisely the same principle and plans. Affiant believes that said machine, and the running of it in Louisville, is of great injury to the said Bunn.

And further saith not

FELIX SMITH.

Affidavit of H. W. Cood.

The deponent, H. W. Cood, produced on behalf of applicants, says: He has resided in Louisville ever since 1831, in the State of Kentucky; that, from 1831 to 1834, affiant was clerk and book-keeper in the employment of Smith & Keats, and was in their employment when they bought the patent right from Lewis Sanders. Affiant thinks that the patent for the machine bought of Sanders, issued to and in the name of Woodworth and Emmons, and not in the name of Woodworth alone. Affiant thinks that Sanders did not buy of the patentee, but of their venders, whose names affiant thinks *was* Smith & Collins.

The price *of* it cost Smith & Keats was about $6,000. Affiant knows that Bunn bought the patent right from Smith & Keats, and paid them three thousand dollars for the residue of the time. Affiant states that he has but little skill in machinery, but is able to tell when two machines are worked on the same principle. Affiant has not examined Wilson's machine, but has learned that it is the same plan, motion, and principle of Bunn's. Affiant knows that the use of said machine, in said city, is greatly injurious to the said Bunn, and believes that Wilson's machine infringes in structure and use upon the patent of said Bunn.

And further saith not H. W. COOD.

I, William S. Pilcher, commissioner to take acknowledgments of bails, affidavits, &c., in and for the eighth circuit, Kentucky district, of the United States of America, duly commissioned, and so acting, certify, that the above named witnesses having been by me duly sworn, cautioned, and examined, did, at the time stated in the caption, and at my office, in the city of Louisville, in the circuit and district aforesaid, depose and give the above statements, and no more; and that the statements so made having been reduced to writing by me in their presence, and thereupon read by me to them, were so subscribed by them in my presence; and that I am not akin to, or counsel for, either of the parties, or in any wise interested in the controversy. Given under my hand at the time and place stated in the caption.

W. S. PILCHER: *Commissioner.*

Appearance of defendants entered.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, on Monday, the 4th day of September, 1843, came the defendants James Wilson, Benjamin Wilson, and Alpheus Wilson, by their counsel, and entered their appearance to the complainans' bill in this cause.

Answers of defendants filed.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, on Monday, the 2d day of October, 1843, came the defendants by their counsel, and thereupon the said James Wilson filed his separate answer to the complainants' bill in this cause, and the said Benjamin and Alpheus Wilson also filed their joint answer to the same.

Which answers, filed as above, are in the words and figures following, that is to say—

Answer of James Wilson.

The answer of James Wilson to a bill in chancery filed in the circuit court of the United States, for the Kentucky district, by W. W. Woodworth and E. V. Bunn against him and others.

Respondent saving and reserving all exceptions to the many errors and misstatements in compl'ts bill, for answer thereto, or so much thereof as advised it is material and proper for him to answer unto, he answers and says: That he does not know that complainant, W. W. Woodworth, is a citizen of the State of New York; he admits that E. V. Bunn is a resident of the city of Louisville, and a citizen of the State of Kentucky, and he admits that he is a resident of Louisville, and citizen of the State of Kentucky, and that Benjamin Wilson and Alpheus Wilson, his co-def'ts, are also residents of Louisville, and citizens of the State of Kentucky. Respondent does not know, and therefore denies, that, on or about the 4th day of December, 1828, one William Woodworth, then in full life, but since deceased, was the inventor of a certain improvement or machine for planing, grooving, and tongueing boards and plank, and other material. It may be that such a man applied to the proper department of the Government of the United States for a patent, and obtained one, and that he complied with all the requisitions required by law; but of these facts this respondent has no knowledge, and requires proof; and it may be that the complainant, William W. Woodworth, claiming to be the administrator of the said William Woodworth, applied to the proper department of the Government of the United States for an extension of said patent, and obtained such extension, but of these allegations he has no knowledge, and requires proof; and it may also be that the specification, as required by the laws of the United States, was filed on or before the obtention of the original patent, and also on or before the obtention of the extended patent; and it may be that the disclaimer was filed as alleged in relation to the extended patent; but of these allegations resp't has no knowledge, and requires proof.

Respondent does not know that William Woodworth, deceased, and his assigns, immediately after the obtention of the original patent, erected and put into operation many machines in different parts of the country, and that on said machines a very large quantity of plank and boards have been planed, tongued and groove, and fitted for use, to the very great saving of labor, and to the great benefit of the public. It may be that one of said machines was put into operation in Louisville by Smith & Keats, and that complainant Bunn became the purchaser of said machine, and that at a considerable price; but these things he only knows by hearsay, and as far as the same may have an effect on the interest of this respondent, the requisite proof is required. He knows that Smith & Keats put up a planing machine, &c., and that Bunn went into partnership with them; and afterwards respondent understood that complainant Bunn had bought their interest, and he knows that he carried on the planing business on his own account; and he has heard that he had become the assignee of the complainant Woodworth, of the alleged extended patent, for the city of Louisville and ten miles around the same; and if this be so, the complainant Bunn is required to produce and file his deed of assignment for the same.

Respondent admits, that he was induced to purchase from said Bunn the right to use the Woodworth's extended patent, in the city of New Albany, in the State of Indiana, for the time the extended patent had to run; and respondent admits the town of New Albany is within the distance of ten miles around Louisville.

Further answering, respondent states, that he has heard of the original patent and of its extension, and of the assignment as aforesaid to said Bunn, but he denies that he had or has any knowledge of the validity of the original or extended patent. He admits that he knew that Smith & Keats put up a planing machine in Louisville, and it was said to be under Woodworth's patent, and it was said that complainant Bunn had bought them out, and that he was in the use of machine, and that it was said that he had bought the interest of the administrator in the extended patent, for a distance of ten miles around Louisville, and that he was still in the use of the machine purchased of Smith & Keats; but respondent denies that he has, in defiance of the rights of complainants, about the day of 1843, vended, and caused to be made and set up and put into operation, in the city of Louisville, a machine for planing, tonguing, and grooving planks, boards, &c., and which machine is, in all its material parts, substantially like and upon the plan of the machine, so as before mentioned, invented, made, and put into operation by said Woodworth, and described in the letters patent to him, &c., extended to his administrator, and so sold to the complainant Bunn. Respondent states, that about the month of September, 1842, he, in connexion with P. H. Glenn, contracted with a man by the name of Schencke, of Foxborough, Massachusetts, for a planing machine at the price of $450, and respondent bought said Glenn, and paid the carriage, costing upwards of sixty dollars; and respondent built a house and bought a steam engine for the machine, which arrived in April,

1843; and respondent put up the said machine and commenced working the same about two or three weeks before respondent heard of the right set up by the complainant Woodworth. And respondent states, that his buildings, engines, and machine cost about $3,000, and he was assured by the said Schencke that there was no violation of any existing right in using the said machine, which respondent bought of him as before stated. Respondent admits, that he has used said machine a part of the time since he put it into operation, but not the whole time; and he states, that in investigating and inquiring into his rights, and the rights of the complainant, he has considered that he had a right to continue the use of his said machine, and has so expressed himself. He states, that the use of said machine has not been worth to him the sum of $20 or $30 per day; and states that the privilege of using such a machine is not worth much in the present time; but the loss of his capital invested in his buildings, engine and machine, if stopped by the complainants, will result in the almost total loss of the investment, and the profit that could be made on the same.

Respondent states and charges, that William Woodworth was not the true and original inventor and discoverer of the machine patented to him, and extended to the complainant Woodworth, as his administrator, as he is informed, believes, and charges; and he is informed, believes, and charges, that the circular saw was, prior to the date of the Woodworth's patent, in use, and so were planing, and tonguing, and grooving machines, upon the same plan and principle of mechanics; and that the same, long prior to the said patent, was mentioned and described in various works upon the subject of mechanics.

Respondent further states and charges, that he is informed and believes, that the original patent to William Woodworth was void, because the invention was in no particular a new and useful invention, and that the extension is void for the same reason, and because the extended patent and specification is for a different invention and improvement than that mentioned in the original patent and the specification. And he is further advised, that complainant Woodworth and complainant Bunn have no joint interest, and have no right to sustain this suit, and that this honorable court has no jurisdiction on the allegation of complainants' bill, and that there is no equity in complainants' bill. He states, that he has no connexion with his co-defendants Benjamin and Alpheus Wilson in the machine which he has been using in the city of Louisville, and they have no interest in the same.

And having answered, he prays that complainants' injunction be dissolved, and the bill dismissed, and that he have his costs and the damages sustained by reason of complainants' injunction.

And he will ever pray, &c.

J. H. WILSON.

State of Kentucky, Jefferson county, sct:

This day the above named James H. Wilson came personally before me, a justice of the peace of said county, and signed the within answer, and made oath that the statements contained in the within and foregoing

answer, so far as made of his own knowledge, are true, and those made from information of others, he believes to be true.

Given under my hand and seal, this 22d day of August, 1843.

R. TYLER, *J. P. J. C.*

Answer of B. Wilson and A. Wilson.

The answer of Benjamin Wilson and Alpheus Wilson to a bill in chancery, filed in the circuit court of the United States for the Kentucky district, by W. W. Woodworth and E. V. Bunn, against them and James Wilson.

Respondents state, they have seen and read the answer of their co-defendant James Wilson, and believe its allegations and statements are true. They have no interest in the planing machine put up *him* by the said James Wilson, as stated in his answer, and they have in no way violated the patent right of the complainant Woodworth, if he have a valid right; and they deny the allegations of complainants' bill, so far as the same charges them with a violation of complainants' patent in any particular. And having answered all that they are advised is material, they pray to be dismissed with their costs, &c.

B. WILSON,
A. WILSON.

State of Kentucky, Jefferson county, sct:

This day the above named Benjamin Wilson and Alpheus Wilson came personally before me and signed the above answer, and made oath that the statements contained in the above answer, so far as made of their own knowledge, are true, and those made from information of others they believe to be true.

Given under my hand and seal, this 22d day of August, 1843.

R. TYLER, *J. P. J. C.* [L. S.]

Replication.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, on Monday, the first day of April, 1844, came the complainants, by their counsel, and for replication to the separate answers of the said defendants, sayeth: That the matters set forth and alleged in their said answers are not true; and, therefore, they say, that the matters therein alleged ought not to preclude them from the relief sought in their bill. Wherefore, they pray for the relief sought in their bill; and, as in duty, &c.

Notice to dissolve injunction overruled.

And afterwards, to wit, at a circuit court of the United States, continued and held as aforesaid, on the 24th day of November, 1843, came the parties, by their counsel, and the court being now sufficiently advised of and concerning the motion to dissolve the injunction made herein on yesterday, it is ordered that the same be overruled.

Injunction renewed.

And afterwards, to wit, at the same court, continued and held as

aforesaid, on the 25th day of November, 1843, came the complainants, by their counsel, and, on their motion, it is ordered, that the injunction granted herein by the district judge be renewed.

Order rule against J. Wilson.

And afterwards, to wit, at the May term of the court aforesaid, and on the 13th day of May, 1844, came the parties aforesaid, by their counsel; and, on motion of E. V. Bunn, and affidavit by him filed, it is ordered that the defendant, James Wilson, appear here on the 2d day of the next term of this court, and shew cause, if any he can, why an attachment should not be issued against him for a contempt, as it is alleged, which he has committed by the violation of the restraining order and injunction against him heretofore awarded in this cause.

Leave to complainants to withdraw drawings.

And, by consent of the parties, leave is given the complainants to withdraw the drawings of the machine and specifications, filed with and as a part of the depositions of John G. Goulding, William H. Grainger, and ——— Wolfe, for the purpose of their being used in the taking of other depositions, so that the same shall be returned with such depositions.

The following is the affidavit of E. V. Bunn, mentioned in the above order, to wit:

Affidavit of E. V. Bunn.

United States of America, Frankfort, in the State of Kentucky, eighth circuit, Kentucky district:

This day E. V. Bunn personally appeared before me, and made oath on the Holy Evangelists that James Wilson, defendant, in a suit in the honorable court of the United States for the Kentucky district, in which the said Bunn is plaintiff, hath, since the order made in said cause restraining said Wilson from using and working a planing machine, in the city of Louisville, set up and is now working another machine for planing planks, in the city of Louisville; that the said affiant verily believes that this said last mentioned machine is in principle the same as that which the said Wilson was, so as aforesaid, enjoined from using; and that the said Wilson, by that act, and continuance to run said last mentioned machine, has violated the order of injunction of said court, to the great injury of the said affiant, Bunn. Wherefore the said Bunn has made this affidavit to obtain a rule on said Wilson to appear before the said court to shew cause why the said Wilson shall not be attached for a contempt in violating the said injunction.

Given under my hand this 11th day of May, 1844.

JAMES SHANNON, *J. P.*

Affidavit filed by J. Wilson, and time to take depositions extended three months.

And afterwards, to wit, at the November term of the court aforesaid,

and on the 23d day of November, 1844, came the defendant, James Wilson, by his counsel, and filed his affidavit in response to the rule entered herein, which rule is continued by argument of the parties, and the time for taking deposition is extended to the expiration of three months from this time.

The affidavit mentioned and filed in the above order is as follows, to wit:

Affidavit of James Wilson.

The defendant, James Wilson, states, on oath, that immediately on the service of the injunction in this case he ceased to use the machine mentioned in complainant's bill, and conformed himself in all respects to the order of the court, not being in a condition to give the requisite surety to enable him to use the machine pending the contest.

That afterwards, in the month of August, 1843, this defendant, James Wilson, in conjunction with his brother, Alpheus Wilson, contracted with Benjamin Bicknell and Ebenezer Jenkins, his partner, for one of his, Bicknell's, machines, and the right to use the same in the city of Louisville, and made with them a contract, when the patent was obtained, for the right to purchase the same for the city of Louisville; that the defendant, James Wilson, was informed, and believed, that the said Benjamin Bicknell, some time in 1842, had invented a new and useful planing machine, new in its peculiar arrangements, construction, and combination, in the particulars set out in the affidavit of the said Bicknell herewith filed, and made a part of this affidavit. And that, in pursuance of the act of Congress, said Bicknell, on the 19th of January, 1842, paid into the Treasury of the United States the sum of twenty dollars, and filed in the Patent Office of the United States a caveat, setting forth the design and purpose of his machine, and its principal and distinguishing characteristics, and praying protection of his right until his invention should be matured. That afterwards, when said Bicknell and his partner, Jenkins, had set up in Cincinnati his new and improved planing machine, Brooks & Morris, assignees of the patent of W. Woodworth, filed *his* bill, and prayed an injunction against the said Bicknell & Jenkins, to restrain them from the use of said machine, which was granted, and an issue out of chancery was had at the last July term of said court, and at that trial the jury disagreed, and the case is still pending in the circuit court of Ohio. That Ebenezer Jenkins is now at Washington city, for the purpose of procuring a patent in pursuance of the caveat filed. The defendant, James Wilson, states that, in the purchase of said Bicknell's machine, and in its use in the city of Louisville, he had no intention of violating the injunction granted in this case, and was informed and believed that it was a different machine from that of Woodworth's, and he believes that it is so, and that they are substantially unlike each other. The Woodworth machine performing, what is termed in mechanics, the dubbing operation, cutting in and cutting out like an adze, and throwing off chips. The Bicknell machine performing the work of a plane, and throwing off shavings; and refers

to the affidavit of Lewis S. Asken, herewith filed as a part hereof. This affiant states that all he is worth is invested in the establishment and machine he is now using, and that he is informed and believes that he can establish that Bicknell's machine, which he is now using, is a different one from Woodworth, claimed by Bunn, and its use is no violation of Woodworth patent, and he submits to the court whether the question of interference can be properly settled upon this rule; and, if the court holds that it can be, then affiant asks for time to make the necessary and proper proof.

J. H. WILSON.

November 23, 1844, sworn to in open court by J. H. Wilson.
Attest, JNO. H. HANNA, *C. C. C., K. D.*

Order commission opened.

And afterwards, to wit, at the May term of the court aforesaid, and on the 15th day of May, 1845, came the complainants, by their counsel, and on their motion the commission is opened, and time for either party to take depositions is extended to the first Monday in June next.

Partly heard.

And afterwards, to wit, at the same term of the court aforesaid, and on the 2d day of June, 1845, came the parties aforesaid, by their counsel, and this cause came on to be heard, and was heard in part.

Partly heard.

And afterwards, to wit, at a subsequent day of the term aforesaid, and on the 3d day of June, 1845, came again the parties aforesaid, by their counsel, and this cause was further heard.

Fully heard.—Rule against J. Wilson.

And at a subsequent day of the term aforesaid, to wit, on the 4th day of June, 1845, came again the parties, by their counsel, and this cause was fully heard upon the merits, and also upon the rule made herein at the May term, 1844, on the defendant, James Wilson, to shew cause why an attachment shall not be issued against him, for a violation of the injunction awarded against him in this cause, as by the complainants in their petition or affidavit alleged.

And at a subsequent day of the term of the court aforesaid, to wit, on the 5th day of June, 1845, came again the parties, by their counsel.

Final decree.

This cause came on to be heard at this time, and was argued by counsel; and thereupon, on consideration thereof, it was adjudged, ordered, and decreed, as follows:

It is adjudged and decreed, that the injunction heretofore awarded the complainants against the defendants be, and the same is hereby, dissolved; and that the complainants' bill be, and the same is hereby, dismissed. ~~And the matter of the rule granted the complainants upon the defendant, James Wilson, for him to show cause why an attachment should not be issued against him for his violation of the abovementioned~~

~~& remand for J. Wilson to pay in costs~~
~~in part and in favor of Bunn & that as to~~
~~pay costs~~

~~injunction, as by them alleged, having been also heard and argued by counsel, it is ordered and adjudged by the court, that the defendant did not violate said injunction; and it is therefore ordered, that the said rule be, and the same is hereby, discharged.~~ And it is further decreed, that the complainants pay to the defendants their costs in their defence of this suit expended.

Appeal granted.

And afterwards, to wit, at the same term of the court aforesaid, and on the 6th day of June, 1845, came the complainants, by their counsel, and prayed an appeal in this cause to the Supreme Court of the United States, which is granted, upon their entering into bond in the clerk's office of this court, within ten days from this time, with William Lyon and John W. Preuitt, their securities, in the penalty of five hundred dollars, conditioned according to law.

The following are the affidavits of Benjamin Bicknell and Lewis S. Asken, filed with the affidavit of Jas. H. Wilson, to wit:

Affidavit of B. Bicknell.

Benjamin Bicknell, of the city of Cincinnati, Hamilton county, Ohio, makes oath and says, that some time in the year A. D. 1842, he invented a new and useful planing machine—new in respect to its peculiar arrangement, construction, and combination, in these particulars, to wit:

1st. The novel form of the planing-wheel, it being dishing, with arms and a shaft inclined one inch to the foot, or a vertical shaft with the bed inclined, on which the board is placed, so as to correspond with the dish of the wheel.

2d. The manner of holding the bits, and of so arranging them as to use double irons.

3d. The circular rollers held by elliptical springs.

4th. A beveled slide, to use in place of rollers, and to hold in the same way.

5th. The horizontal cast-iron (or other material) plane stock, with eight or more bitts for tonguing, grooving, or planing boards, working by a crank and pitman, which may be raised or lowered by screws, with which it is connected or fastened to the pitman, which stock may be placed in an angle corresponding with the inclination of the bed.

6th. The improved rotary grooving head, with jointing bitts for reducing board to a width, and for cutting the groove.

7. The improved wheel or head for tonguing, of twelve bitts; the six upper bitts being so placed as they will cut the upper shoulder of the tongue, although the board may vary in thickness, *with* the four lower bitts cut the under shoulder of the tongue, leaving two bitts to joint and clip the edge and corners of the edge of the tongue—thus doing the work perfectly.

8th. The application of elliptical springs to the propelling roller.

That in pursuance of the act of Congress, this affiant, on the 19th day of December, A. D. 1842, paid into the Treasury of the United States

the sum of twenty dollars, and filed in the Patent Office of the United States a caveat, setting forth the design and purpose of his machine, and its principle and distinguishing characteristics, and praying protection of his right until his invention should be matured.

That some time subsequent to the filing of said caveat, and after this affiant, in company with Ebenezer Jenkins, had set up in Cincinnati his new and improved planing machine, Brooks & Morris, assignees of the patent of William W. Woodworth, administrator of William Woodworth, prayed for an injunction against this affiant and the said Jenkins, to restrain them from the further use of said machine, and which was granted; and, on an issue out of chancery, there was, at the July term of the circuit court for the district of Ohio, a trial at law upon the issue raised by the said Brooks & Morris, and at that trial the jury disagreed, and the case is now continued in the said circuit court. And this affiant further states, that his said partner, Ebenezer Jenkins, is now at the city of Washington, for the purpose of procuring a patent, in pursuance of the caveat filed. And this affiant further states, that some time in the month of August, A. D. 1843, this affiant and his partner, Jenkins, for a valuable consideration, sold to Alpheus & James Wilson, of Louisville, one of his machines, and gave them the right to use the same in the city of Louisville; and further agreed with the said Wilsons, when the patent was obtained, to give them the right to purchase the same for the city of Louisville.

BENJAMIN BICKNELL.

Sworn and subscribed before me, this 19th day of November, 1844.
R. A. MADISON, *J. P.*

Affidavit of L. S. Asken.

Lewis S. Asken, of lawful age, of the city of Cincinnati, states, that he is a practical machinist, and has been for seventeen years. That he is acquainted with the planing machine patented by Wm. Woodworth, and has seen it in operation. Also, that he is acquainted with the Bicknell planing machine; that he built three of the Bicknell machines, and that so far as the planing is concerned he considers the two machines substantially unlike each other. The Woodworth machine performs what is called in mechanics the dubbing operation, cutting in and out like an adze, and throwing off chips; the other performs properly the work of a plane, and throws off shavings.

LEWIS S. ASKEN.

Cincinnati, Nov. 19th, 1844.

Sworn and subscribed before me, this 19th day of November, 1844.
R. A. MADISON, *J. P.*

Affidavit of E. Converse.

Elijah Converse, of lawful age, of the city of Cincinnati, states, that he is acquainted with machinery in general, and that he has paid particular attention to planing machines; that he has seen the Woodworth planing machine in operation, both in Cincinnati and elsewhere; also,

that he is well acquainted with the Bicknell planing machine, and has often seen it in operation. In the matter of planing, he considers the two machines entirely unlike in principle; in regard to the tonguing and grooving, he thinks the principle of the two machines alike, though in construction they are unlike.

E. CONVERSE.

Cincinnati, Nov. 19, 1844.

Sworn and subscribed before me, this 19th day of November, 1844.

R. A. MADISON, *J. P.*

The State of Ohio, Hamilton county, ss:

I, the undersigned, clerk of the court of common pleas, within and for said county, do hereby certify, that R. A. Madison, before whom the foregoing affidavits appear to have been taken, was, at the time of signing the same, and is, an acting justice of the peace in and for said county, duly commissioned and sworn, and that to all acts by him as such, full faith and credit are due, and that the foregoing signatures of the said Madison are genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of our said court at Cincinnati, this 29th day of November, A. D. 1844.

[L. S.]

E. C. ROLL, *Clerk H. C. C. P.*
By J. M. McMASTER, *Deputy.*

The State of Ohio, Hamilton county, ss:

I, William P. Caldwell, president judge of the court of common pleas, within and for the ninth judicial circuit, hereby certify, that the foregoing certificate of E. C. Roll, clerk of the Hamilton county court of common pleas, by J. McMaster, deputy, is in due form of law; and to the official of him, as such clerk, full faith and credit are due.

In testimony whereof, I have hereto set my hand and seal, this 20th day of November, A. D. 1844.

WILLIAM P. CALDWELL, [SEAL.]
Pres. Judge.

The following are the depositions taken on the part of the complainants, to wit:

Interrogatories by complainants.

E. V. BUNN and WILLIAM W. WOODWORTH, Admr. of William Woodworth, complain'ts, vs. JAMES WILSON, BENJAMIN WILSON, &c., defendants. } In equity in 8th circuit court of the U. S. for Kentucky district.

1st. Did you ever see and examine the machine used by the plaintiff, E. V. Bunn, in Louisville, for planing, tonguing, and grooving plank?

2d. Did you know if there was a patent; and if yea, in whose name was the same for said machine?

3d. Examine the drawing now shown to you, and say whether the machine used by the plaintiff, Bunn, is in principle the same as that described in the drawing.

4th. What is your occupation? Are you acquainted with the principles of mechanics?

5th. Examine the drawing and explanations now shown to you, and say whether a machinist could, from the explanation or specification and drawing, construct said machine.

6th. Did you ever see a planing machine in use by the defendants, Wilsons, or some of them, in Louisville, in the year 1843? If so, was it or not on the same principle with that in the drawing to which you have before referred? If not, in what parts, or in what principle, was it a different machine?

7th. Have you seen a planing machine, now in use in Louisville by the defendants, Wilsons, or some of them? Say in what it is different from the one described in the drawing before shown to you. Is the principle the same in each; and if not, in what does the difference consist?

8th. Do you know who were the makers of the first and second machines used by the Wilsons, the defendants, or some of them? Have you seen other machines for planing made by the same persons who made the two for the Wilsons? Do such machines differ from planing machines for which Woodworth had a patent? If so, in what principle did they differ?

9th. Do you know, or can you set forth, any matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

LOUGHBOROUGH & BROWN,
For complainants.

Interrogatories by defendants.

WILSON,
ads.
WOODWORTH'S ADM'R & E. V. BUNN.

Interrogatories on the part of the defendants.

Questions by defendants.

1st. Have you seen the specification and models of Woodworth's patent taken out in December, 1828; and if so, state what resemblance it bears to the present machine known as Woodworth's, and in what it differs. Be specific and particular in the resemblances and in differences.

2d. State whether you do or do not consider that Woodworth's patent was for three distinct parts, viz: 1st. An improved cylinder. 2d. An improved cutter. And, 3d. A circular saw to reduce boards to a given thickness. And whether you do or do not consider Woodworth's patent for a new invention in all particulars. Then state which of them were not claimed as new.

3d. State whether you do or do not know, from scientific works, that the improved cylinder, and the improved cutter, and the circular saw,

described in the specifications to Woodworth's patent of 1828, were known, described, and published long before Woodworth's patent; and furthermore state, whether you do or do not know that *that* they were in use long before that time; and if all of them were not known, described, and published, and in use before the date of the patent, then state which of them were so known, described, and published before the date of Woodworth's patent. Give all your knowledge and information on this subject, and the sources from whence you derive it.

4th. State whether you consider it possible for any man acquainted with machinery to have remained ignorant of the fact that all the parts of Woodworth's patent granted in 1828, and claimed as original inventions, were not original inventions during a period of fourteen years or more.

5th. State whether it was or was not generally known by men of science, and practical machinists and others, before the end of fourteen years after the date of Woodworth's patent, that he was not the original inventor of the circular saw for reducing boards to a given thickness, described in the specifications to his patent; and also make the same statement as to the other parts of Woodworth's patent.

6th. State whether, from the specifications of Woodworth's patent, it is or it is not so uncertain that a practical machinist would be unable to construct the machine ; and whether the thing patented is not different from the thing now claimed.

7th. State whether or not you do not consider Woodworth's patent for various and distinct improvements, and those improvements not distinctly set forth, so as to enable a practical machinist to construct the machine; and whether, in the specification to Woodworth's patent, there is any description of power by which any part of the machinery is to be moved.

8th. State whether Thomas Blanchard, of Boston, Massachusetts, did or did not invent and use cutters, and planing wheels, and cylinder, &c., prior to the date of Woodworth's patent. Also state whether said Blanchard did or did not invent a machine for planing surfaces with rotary knives, &c., and put the same in operation in Springfield, Massachusetts, in 1823, and if the same are not now in use there with knives the whole length, and also in use in Grafton, Massachusetts, in 1824; and state further whether Woodworth did not see and inspect the same before his patent issued; and also state whether Blanchard did or did not make rotary cylinders, with cutters and lays, at Harper's Ferry, in 1826; and whether, in 1825, one of the like kind was not put in use in Cincinnati.

9th. State whether this same invention was not patented to Samuel Bentham, in England, in 1793, and printed in the Repository of Arts and Manufactories, in vol. X, London, 1799?

10th. State any other material facts you may know.

GUTHRIE & TYLER,
For Defendants.

Cross interrogatories by complainants.

WOODWORTH'S ADM'R & E. V. BUNN
vs.
BENJ. WILSON.

Cross interrogatories by complainants.

1st. Where do you reside; are you mechanist, or otherwise skilled in the principles of mechanics; if there exist any differences, do such differences introduce any new principle in the machine?

2d. Do you know when or where, and by whom, any machine, embracing the principles of Woodworth's machine, was used for the purpose of planing, tonguing, and grooving planks? If so, state it.

3d. In what does the difference in the machine, and that described in the specification, differ?

4th. Describe the machines of Blanchard; did you see it; by whom was that made or used in Connecticut, and at what place; describe it; how long were those machines used?

5th. Do you know of any suit by Woodworth, or his assignee, against any person or persons for a violation of Woodworth's patent; in what place were such suits; were you ever before called on to depose or give evidence as to Woodworth's patent; if so, when, where, and by whom?

6th. Have you been at any time, or are you now, in any way interested in making, vending, or using, or connected with others in making, vending, or using, planing machines?

7th. State any other facts known to you material for complainants.

BROWNE, L., & FIELD,
For Complainants.

Jno. Goulding's deposition.

The deposition of John Goulding, taken at the office of Thomas M. Smith, in Louisville, Kentucky, on the 24th day of April, 1844, pursuant to a dedimus potestatum to said Smith directed, from the clerk's office of the 8th circuit court, Kentucky district, of the United States of America, herewith returned; said deposition to be read as evidence in the suit now depending in the said court, wherein William W. Woodworth, administrator of W. Woodworth, and E. V. Bunn are complainants; and James Wilson, Benjamin Wilson, and Alpheus Wilson are defendants.

Deponent being of lawful age, and duly sworn, saith as follows to the several interrogatories herewith, also returned.

Answer to interrogatory 1st by defendants' attorney. I have only as yet seen the specifications of the Woodworth's patent. I have not seen the drawing.

By agreement of parties and counsel, the further examination is postponed to 9 o'clock to-morrow, A. M.

THOMAS M. SMITH, *Com'r.*

Met according to adjournment, and the said deponent not attending,

the taking is again adjourned to 3 o'clock, *A. M.*, on this day, April 25th, 1844.

The taking again commenced, 3 o'clock, P. M., deponent Goulding stated on yesterday, I not having seen the drawing, said I had only seen the specification. To-day I have the drawing and specification before me, and the machine of the defendants, Wilsons. In principle, the machine in the specifications and models or drawing of Woodworth, here shown me, and that I have seen, which is enjoined, are the same. The one enjoined is horizontal, and that of the specifications and models is perpendicular.

Answer to 2d interrogatory. Yes, I consider Woodworth's patent was for three distinct parts: 1st, an improved cylinder; 2d, an improved cutter; and 3d, a circular saw, to reduce boards or plank to a given thickness. It is my opinion that Woodworth's patent is for a new invention in the said three parts above described.

Answer to 3d interrogatory. The cylinder with the rotary cutter or planes, described in the specifications, &c., of Woodworth's patent, were not original at the date of his patent, they had been in use at least ten years before. I made and used them before myself in Chilinsford, now Dowell, Massachusetts. The circular saw, also, was in use about the same time at the same place.

Answer to 4th interrogatory. I do not know it would be proper to say all the parts were not original inventions. It is my opinion, that a man versed, as you have described, in machinery, might have ascertained in fourteen years that they were not all new inventions.

Answer 5th. The circular saw for cutting boards to a particular width was in general use before Woodworth's patent, and certainly before the expiration of the 14 years, and was generally known to practical mechanists. The other parts of the machine *was* not in general use. I think they were not.

Answer to the 6th and 7th. I am of opinion the practical mechanist ought to have been able to make one from the specifications and drawings. There is no description of the power by which the machine is to be put into operation, but that I regard as immaterial.

Answer to interrogatory 8th. Blanchard had such in use in Boston, Massachusetts, but I do not believe he was the inventor, and I am able to say, at this time, whether he had them in use before 1828, the date of the patent of Woodworth. I am informed that he had before fixed, and had one in operation in Springfield, Massachusetts, and Grafton; but the one in Boston I saw in the summer of 1831, and from what I saw, I knew it had been in use several years before I saw it. It was then in use for making lasts—such machines were then in use also for making gun stocks. I do not know that Woodworth ever saw or knew of any such machines before he took out his patent. I know nothing about the balance of this interrogatory.

Answer to interrogatory 9th. I do not know.

Answer to interrogatory 10th. I have seen the machine that Wilsons, the defendants, are now running in this city. The principle in the ma-

chine they run, I am of opinion, are the same of those of Woodworth's patent. In this machine, the cutters are fixed upon or through the arms, so that they project through the arms, and so that they being brought in contact with the board, the operation of planing is effected—whether the arms are at right angles, or at a greater or less angle from the shaft, makes no difference in the principle. In Woodworth's patent, the cutters are placed on the pariphary of the cylinder, parallel with the shaft, or nearly so. Those that I used at Chilinsford or Dowell, were placed on the paraphary of the cylinder, parallel to the shaft. I also used them in an angle on the paraphary, so that the cutting was performed in the same way precisely as the one enjoined in this suit. The planing or cutting of Blanchard's machine was upon the same principle as Woodworth's patent, and I consider all upon the same principle so far as the cutting is concerned.

In answer to cross interrogatory No. 1 by complainants: He says he resides in this city, and formerly lived in Massachusetts. He is a practical and operative mechanist, and considers himself a judge of these matters, as I have taken from the patent office some 20 patents for inventions of his own. I consider the principles in Woodworth's machine, the one enjoined, and of the one I have seen in operation here by the defendants, all the same; likewise those I *above* described above as seen used in Massachusetts. I state, moreover, that the parts applicable to tonguing and grooving, also involve the same principle. At the request of the counsel for the complainants, I have written my name on the several drawings of Woodworth's patent, and of the machine now in use by the defendants, above spoken of, to which I refer.

The complainants' counsel agreeing to waive the residue of his cross interrogatories, further deponent sayeth not.

JOHN GOULDING.

P. J. Devlin's deposition.

The deposition of P. J. Devlin, taken at the same time and place, and to be read in the same case, as the foregoing of John Goulding, he being first duly sworn, and of lawful age, deposeth as follows to the several interrogatories, viz:

Answer to interrogatory No. 1. I worked in Washington city, in the employ of the United States Government, in the navy yard, under the direction of John Judge, foreman in the years, I think, of 1828 and 1829, and afterwards. When I first went there, there was a planing machine, as well as I now recollect, in the saw mill belonging to the yard, upon the same principle as that I have seen in Louisville, now in use by Mr. Bunn, and of the one detached from the works of the defendants, Wilsons, but in his house. The one I saw in Washington was improved while I was there, and used and taken to Mr. Judge's own place in the city. The defendants, waiving further enquiry, and the complainants all cross-examination, further deponent saith not.

P. J. DEVLIN.

James Mullin's deposition.

The deposition of James Mullin, taken at the same time and place, and to be read in the same suit, as the foregoing, he being of lawful age, and first duly sworn, saith as follows to the interrogatories on the part of the defendants:

I worked in the navy yard of the Government at Washington city near on to thirteen years, commencing in 1819, to the best of my recollection. In the year 1824, and while engaged at said yard, I assisted in fixing and putting in operation there a machine upon the same principle precisely of the one now enjoined, and at the defendants, Wilsons, in this city. It was used in the yard for tonguing and grooving, and for facing the piles for the dry dock, and the machine was made for that especial purpose. John Judge was the foreman, and said machine was put up under his direction. It was afterwards removed to his place, and put up and used as a planing machine for his individual purpose. I know that the circular saw was used in the same city before Woodworth's patent was obtained, and for the purpose of sawing of lignum vitæ and wedges for launching ships. I have worked in a machine shop for near about thirteen years, and consider myself a tolerable judge of machinery. I understood, while at Washington, there was a suit, or dispute, or difficulty between Woodworth and said Judge, about the right or patent of the machine, but I had no personal knowledge of it. The defendants waiving further examination, and the complainants all cross-examination, further this deponent saith not.

JAMES MULLIN.

The further taking of depositions is, by the request of the defendants' counsel, adjourned over to Tuesday, the 30th day of *May* inst.

THOMAS M. SMITH, *Comm'r.*

Tuesday, 30th April, the taking is at the request of defendants laid over to 9 o'clock to-morrow.

THOMAS M. SMITH, *Comm'r.*

L. M. Ricketts' deposition.

May the 1st, 1844 —The deposition of L M. Ricketts, taken at the same place, on the first day of May, 1844, pursuant to yesterday's adjournment, to be read in the same *place* as the foregoing, deponent being of lawful age, and first duly sworn, says as follows to the several interrogatories by defendants and complainants:

Answer to interrogatory No. 1, by defendants' counsel. I have seen the specifications, but I never have seen the model. I have seen the one in this city used and in operation by E. V. Bunn, said to be erected according to and under Woodworth's patent. It resembles the machine contemplated and described by Woodworth's specifications in the principle of planing by rotary motion, but it is materially or considerably different in its construction from that contemplated or described by said specification.

Answer to No. 2. I do consider Woodworth's patent as having three distinct parts, as set forth in the interrogatory. Woodworth, ac-

cording to the said specifications, claims each of said separate parts as new inventions.

Answer to No. 3. Yes; I have seen descriptions of machines in scientific mechanical works, setting forth the same principle, and for the same purpose, that of planing, &c. The first description of a planing machine, of which I have any knowledge, was given in a work called the Builders' Guide, which was describing of the patent of General Bentham, of England, for a planing machine; the description there given was not a very perfect one, and did not resemble Woodworth's machine very much. Bentham's patent was granted in England in 1791. The next I saw is described in the Edinburg Encyclopedia. This machine was invented by Mr. Bremah, in 1802, and is precisely the same as Woodworth's, in the principle of planing by rotary motion, according to Bremah's specifications, and *drawing* of his machine, both of which I have seen, differing, however, from Woodworth's in construction materially, but still the same in principle. The 1st of June, 1805, John Benock, of Boston, Massachusetts, obtained a patent from the Government for a planing machine, similar in principle to that of Woodworth's machine, and was constructed for planing in 1806. Joseph Hannock, of Philadelphia, also obtained a patent for a like invention, and on the same principle. These two last differ in the detail of construction from that of Woodworth's, but the principle the same. They are both published in the American journal of Franklin Institute. In the same book I find that Joshua Reihim on the first of November, 1827, obtained a patent for a planing machine, considerably improving upon those of his predecessors, but upon the same principle, and for the like uses as the other, and Woodworth's machine.

Answer to No. 4. I think it very probable, at least he would have discovered it in that time.

Answer to 5th. My impression is, that it was generally known to practical mechanics within that time that the circular saw was in use for splitting boards. And my further answer is, those who were in the habit of reading works like those above described, might have seen that the circular saw was so used. Also, the other parts claimed by Woodworth in his patent, though not the same in detail, all however the same in principle.

Answer to 6th. I think it would be quite difficult to take Woodworth's specifications and construct a machine according to them; and it is my opinion that the machine now used and claimed as Woodworth's patent does not resemble the one set out and described in his specifications. It does to some extent, but not very much. I think the principle is the same.

Answer to 7th. For my answer to this interrogatory, I refer to the last above answer; only saying, further, that I do not think, in said specifications, there is any description of the power by which the machine is to be moved.

Answer to No. 8th. No. I can't answer as from my own knowledge. I have heard of some of those things, but don't know them.

Answer to 9th. This is answered in the answer to the third interrogatory.

Answer to the 10th. There is some similarity in the construction of the two machines used by the Wilsons, to that of the one used by Bunn, and claimed as Woodworth's, but differing considerably in the details. Nevertheless, the same in principle, which is the rotary motion.

Interrogatories by complainants' counsel.

Answer to No. 1. I reside in the city. I am a mechanist, and skilled in mechanics to some extent. I have said, and still say, there is a difference in the mode of construction of the machine above spoken of, but think there is no difference in the principle.

Answer to No. 2. I can only state as above, in respect to my information as to other machines. I do not recollect to have seen other machines anywhere in operation before the date of 1828. I recollect that in the description of machines seen as above contemplated, and proposed to be for edging as well as planing, and I consider that the edging was the same in principle as tonguing and grooving—at least I presume so.

Answer to No. 3. That would be difficult to answer, for I should have to go into all the particulars of the construction. But I do not think there is any difference in the principles arising from any existing difference of construction.

Answer to the 4th. I have no knowledge of Blanchard's machine.

Answer to 5th. I know of no suit of the kind other than this, and was never before called on to depose relative to it.

Answer to No. 6. No; I *don't* know of anything that can be regarded as material, further than what I have said. And further he saith not.

L. M. RICKETTS.

The further taking is adjourned until to-morrow 10 o'clock, A. M.

THOMAS M. SMITH, *Comm'r.*

Tuesday 10 o'clock, May 2d, 1844.

The further taking is adjourned, by request of defendants, till Friday the 3d of May, 1844. THOMAS M. SMITH, *Comm'r.*

Friday, 3d May, 1844.

Defendants declining further taking in this case, the same is now closed. THOMAS M. SMITH, *Comm'r.*

Commissioner's certificate.

State of Kentucky, Jefferson county, sct:

I, Thomas W. Smith, commissioner, under the authority and commission hereto annexed, hereby certify, that the foregoing depositions of John Goulding, P. J. Devlin, J. Mullen, and L. M. Rickets, were, on the days in the captions thereof mentioned, respectively given, sworn to, and subscribed, by each of them, at my office in Louisville, and in my presence; each being by me first carefully examined, and sworn hen and there to testify the whole truth; and that the whole of said

depositions were by me reduced to writing in the presence of said witnesses. All which is certified to said court.

THOMAS M. SMITH, *Comm'r.*

See interrogatories by complainants and defendants, heretofore copied, pages 42, 43, 44, and 45.

W. H. Grainger's deposition.

The deposition of William H. Grainger, taken at the office of Thomas M. Smith, commissioner, in Louisville, on the 26th day of April, 1844, pursuant to a dedimus potestatum, to him directed, from the clerk's office of the 8th circuit court, Kentucky district, of the United States of America, herewith returned; said deposition to be read in evidence in the suit now depending in the said court, wherein William W. Woodworth, administrator of W. Woodworth, and E. V. Bunn are complainants, and James Wilson, Benjamin Wilson, and Alpheus Wilson are defendants; deponent being of lawful age, and first duly sworn, saith as follows, to the several interrogatories herewith also returned:

Answer to interrogatory No. 1, by Brown and Shaftner, for complainants. Yes, I have seen it.

Answer to 2d. I do not know that it is patented, but have understood it was Woodworth's patent.

Answer to 3d. It is in principle the same.

Answer to 4th. I am at present a steam-engine builder and mechanist; I consider myself tolerably skilled in the principles of mechanics.

Answer to 5th. I have examined the drawings and specifications shown me, and on each of which I have my name written, and I am of opinion they are sufficient to enable a mechanic to construct one according to them. There is no particular scale given, so far as I can discover, upon which the machine is directed to be constructed, and the workmen may construct upon a larger or less scale, but still the principle would be the same.

Answer to 6th. I saw a machine in this city in 1843, in the use of the Messrs. Wilsons. I made no particular examination of it, but it is my opinion that it is upon the same principle with the machine to be constructed according to the drawings and specifications here shown me, and above referred to. It may have been made different by mechanical construction or in shape. I mean to be understood to say, that I looked at the general structure only of the said Wilson's machine, that is, the cutter, &c., and not minutely into the particular manner in which these were brought to operate on the timber; and I say the principles in these particulars and those of Woodworth's are the same.

Answer to 7th. Yes, I have seen the machine now in use by Mr. Wilson in this city. I think the mechanical construction only of Wilson's is different; it cuts, however, by circular motion; there is only a different manner of applying the same power or principle.

Answer to 8th. I state I do not know.

Answer to 9th. No, sir.

Cross examination by counsel for defendants, William Minor, herewith also returned:

Answer to interrogatory No. 1. I have seen, as above remarked, drawings and specifications, which are said to be Woodworth's patent for planing and grooving; but whether they are according to a patent taken out by him in 1828, or not, I am not able to say. As to the model I know nothing. The cutting machine in both, that is, the one in operation here, said to be Woodworth's, and the one according to the specification, as to principle is the same; but as to the particular difference in the construction I am not able to say.

Answer to 2d. I understand that the patent to Woodworth claims to be an invention of the application of cutters to planing boards by a circular motion; whether it is a patent for a new invention, I say that I never heard of a machine for planing boards by circular motion before his machine was in use, and therefore I consider it so far a new invention. As to the circular saw, I do not understand Woodworth as claiming that as his invention, but only claims a new mode of applying it.

Answer to the 3d. No, sir; I don't know anything on that subject.

Answer to the 4th. I don't know.

The defendants waiving the 5th, 6th, and 7th interrogatories, proceeded to ask the 8th, 9th, and 10th; and to these deponent answers, he does not know.

And further the deponent saith not.

WM. H. GRAINGER.

Wm. E. Glover's deposition.

The deposition of William E. Glover, taken at the same time and place as the foregoing, to be read in the same cause; he being of lawful age, and first duly sworn, saith as follows, to wit, to the several interrogatories by complainants' counsel:

Answer to No. 1. I have seen the machine now in use by Mr. Bunn in this city.

Answer to the 2d. I know nothing about it, only that I have been told that it was a patented machine.

Answer to the 3d. This question I am unable to answer, for the want of time to examine the drawings now here shown me. It would take a day to examine them to my satisfaction, and so as to give any proper answer.

Answer to No. 4th. I am engaged in engine building, and consider myself to some extent acquainted with the principles of mechanics.

Answer to the 5th. I have no doubt, if the specification and drawings shown me are correct, the machine could be built by a mechanic.

Answer to the 6th. I did not.

Answer to the 7th. I have not.

Answer to the 8th. I do not know.

Answer to the 9th. I know of nothing, unless it be to state that the model here shown me, is truly the model or representation of the machine now worked and used in this city by Mr. Bunn; the principle is clearly the same; the construction and mode of applying the power may be a little different, but the principle is still the same. There are two modes shown by the model here for planing, but the same in prin-

ciple; the one is horizontal, the other is vertical. The model to which I refer, and as shown to me now, I have written my name upon for identification.

Cross-examination by defendants' counsel.

Answer to the 1st int. I have not seen them, or rather not examined them; the drawings and specifications of a machine, said to be according to Woodworth's patent, have been laid before me, but I have not, as above said, examined them, for want of time. The model, also above said to be shown me, I have somewhat examined, but whether it is a correct model of the machine patented by Woodworth I am not able to say. I do not know whether the one Mr. Bunn is operating in this city, is according to Woodworth's patent or not.

Answer to No. 2d. I don't know any thing of Woodworth's patent.

Answer to the 3d. Not having examined the specifications and drawings, I can't answer the questions.

Answer to the 4th. I think it very possible for a man to remain that time ignorant of it, from the fact that I remained ignorant myself.

Answer to the 5th. I, only in regard to the circular saw, know that it has been a long time in use. I do not remember how early I saw a circular saw in use; it was, I believe, at an early period of my life.

The 6th, 7th, 8th, and 9th questions being waived by defendants.

Answer to the 10th. I dont know any other material facts relative to the case, than those already stated.

And further deponent saith not.

WILLIAM E. GLOVER.

George Martin's deposition.

The deposition of George Martin, taken at the same time and place as the foregoing, to be read in the same cause. Deponent being of lawful age, and first duly sworn, saith as follows, to wit:

Answer to the 1st interrogatory by complainants' counsel—

Answer. I have seen it.

Answer to the 2d. I do not know of a patent but from hearsay.

Answer to the 3d. I have examined the drawings here shown me, and on which I now endorse my name for identification, and say, that the principle of these and that in use here by Bunn is the same.

Answer to the 4th. My occupation at present is that of a scale manufactory. I have worked at various mechanical businesses, and I consider myself tolerably well acquainted with the principles of mechanics.

Answer to the 5th. I have not examined the specifications sufficiently to tell any thing about them, but have looked at the drawings sufficiently to say that I have no doubt, if the specifications are correct, but a mechanic skilled in that branch of business could construct a machine correctly from them.

Answer to the 6th. Yes, I saw the machine used here by the defendants, the Wilsons, in the year 1843; and from my knowledge of it say, that I consider that, and the one to be constructed from the drawings and specifications aforementioned, upon the same principle.

Answer to the 7th. I have seen the machine the defendants now have in operation; it is constructed a little different, but in principle is the same; they are both rotary machines.

Answer to the 8th. I do not know who constructed either of them. I do not know who constructed the said two machines used by the Wilsons.

Answer to the 9th. I have examined the model here produced by Mr. Bunn, and upon which I have written my name for identification; and I consider that the model clearly sets forth the principle of the machine now here in use by Mr. Bunn; and that the drawings, &c., as above spoken of, and on which I have endorsed my name as aforesaid, is also on the same principle, only different in construction and the application of the power. I consider that the principle on which the machine now here in use by the defendants, Wilsons, is the same as represented by the aforesaid model. The model represents three machines, the two used by the Wilsons and the one by Mr. Bunn, and one about as much as the other.

Cross-examination by counsel for defendants, Wilsons.

Answer to the 1st. I have seen the models and specifications of Woodworth's patent, knowing them to be such.

Answer to the 2d. I cannot say any thing about Woodworth's patent. I have seen machines represented to be his patent machine; they use a cylinder, with cutters, &c., circular saw; the circular saw is used separate from the planing machine.

Answer to the 3d. I do not know.

The counsel for the defendants waived the 4th, 5th, 6th, 7th, 8th, and 9th interrogatories, and proceed to ask under the 10th.

Answer to the 10th. I never saw any planing machine for planing plank before December, 1828. I never saw a machine upon the rotary principle, before that time, for planing. I may have seen the circular saw in use before that time, and believe that I had seen turning upon that principle before the above mentioned period; which was upon the same rotary principle as the said model and drafts heretofore spoken of, and used for turning shoemakers' lasts, plough beams, and the like. When I say that the principle upon which the two machines used here by the Wilsons, and the one used by Bunn, and also the one described by the model and drawings now before me, are the same, and further, that the machine used as aforesaid for turning lasts and plough beams, &c., before 1828, are all the same in principle, I mean they are all the same in the rotary principle, and that the rotary principle is the great principle upon which they all depend.

And further deponent saith not.

GEO. MARTIN.

The further taking of depositions is, at the request of the complainants, adjourned over to Tuesday, the 1st day of May inst.

April 26th, 1844. THOMAS M. SMITH,
Commissioner.

Wednesday, May 1st, 1844; the further taking is adjourned to the 2d day of May, 1844, 10 o'clock, A. M.

THOMAS M. SMITH,
Commissioner.

Thursday, 3d May, adjourned at the request of complainant, Bunn, till to-morrow, 10 o'clock, A. M.

THOMAS M. SMITH,
Commissioner.

The complainants declining to proceed further in taking depositions in this case, by the request of the complainants' counsel the same is now closed.

May 3d, 1844. THOMAS M. SMITH,
Commissioner.

Commissioner's certificate.

State of Kentucky, Jefferson county, sct:

I, Thomas M. Smith, commissioner, under the authority and commission hereto annexed, hereby certify, that the foregoing depositions of William H. Grainger, William E. Glover, and George Martin, were at the time and place in the caption thereof respectively mentioned, each of them being first by me carefully examined, cautioned, and sworn, then and there to testify the whole truth, and the whole of each deposition was wholly written by me, at my office in Louisville, and in the presence of said witnesses; all which is certified to said court.

THOMAS M. SMITH,
Commissioner.

Models.

The models and specifications referred to in the foregoing depositions are on file among the papers.

See interrogatories of complainants copied heretofore, page 42.

Sam. Nicholson's deposition.

Samuel Nicholson, being previously duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, deposes as follows in answer to the interrogatories annexed to these answers:

To the 1st inter. he says: I do not remember that I ever saw it.

To the 2d inter. he says: I am not aware that there was any patent, as I do not know of any such machine.

To the 3d inter. he says: No drawing is produced; I cannot therefore answer.

To the 4th inter. he says: I am the superintendent and treasurer of the Boston Water Power Company and the Boston and Roxbury Mill Corporation. I am sufficiently well acquainted with the principles of machinery to have invented various machines, of a great variety of kinds. I have under my care the Boston city mills, for grinding grain, and also for the manufacture of mustard. I am the proprietor of machinery for dressing and jointing staves. I have superintended and di-

rected in the making of various kinds of machinery, and in making models for the same, with my own hand.

To the 5th inter. he says: No drawing and explanations *is* exhibited.

To the sixth inter. he says: I never saw a planing machine in use at the place and at the time enquired of.

To the 7th inter. he says: I have not seen the machine enquired about.

To the 8th inter. he says: I do not know who were the makers of the machine enquired about; and I have not seen the other machines enquired about.

To the 9th inter. he says: I have never known Mr. Woodworth, and have no interest in any planing machine. I have seen a certified copy of Woodworth's patent in court, granted to him in 1828, and I think that the specification therein, with the drawings annexed, would be sufficient to enable a competent mechanic to construct the machine. I should feel competent to direct the construction of such a machine, from those drawings and specifications, as is known by the title of Woodworth's planing machine. The part of the machine as I consider the essential parts are the compressing or *jud* rollers, in combination with antlers; and a person taking the compressing or *jud* rollers would take an indispensable part of the machine. I have read the description of Bentham's machine from the Repository of Arts. A machine could be made like Bentham's, but it would not be a planing machine; it would be more like a burring or rasping machine, and its effects would be to leave a rough surface on the board. There are no compressing rollers in Bentham's machine, and in that particular also it varies materially from Woodworth's. I know of no machine resembling Woodworth's, except those which were the subject of dispute in the case of Washburn and Gould, tried in the circuit court before Mr. Justice Story. I have seen the machine made by Blanchard for making shoe lasts, and also for planing gun stocks, and I do not think they bear a resemblance in any degree to the planing machine of Woodworth.

I have resided in this city of Boston for more than seventeen years, during which I have superintended the operations of both of the corporations mentioned in my answer to the 4th interrogatory.

SAMUEL NICOLSON.

Sworn to, before me.

W. W. STORY,
U. S. Commissioner, Massachusetts District.

E. Lincoln's deposition.

Deposition of Ezra Lincoln, jr.

I, Ezra Lincoln, jr., of Boston, being duly cautioned and sworn, answer as follows to the several interrogatories proposed to me in the annexed commission:

To the 1st inter. I say: No, sir, I never did.

To the 2d inter. I say: I did not know that there was a patent, nor in whose name such a patent, if there were any, was taken out.

To the 3d inter. I say: (No drawing is produced.)

To the 4th inter. I say: I am a civil engineer; my business is to prepare papers for preparing specifications and drawings for patents, and am acquainted with the general theory of machines and the principles of machines.

To the 5th inter. I say. No drawings of explanations *is* exhibited to me.

To the 6th inter. I say: I never saw a planing machine in use by the defendant Wilson, or by any of the defendants, in Louisville, in the year 1843.

To the 7th inter. I say: I have not seen such a machine as that enquired of.

To the 8th inter. I say: I do not know who were the makers of the machine used by the Wilsons, or any of them; I have not seen other machines for planing made by the same persons who made the two for the Wilsons, and therefore I cannot tell whether such machines differ from the planing machines made by Woodworth.

To the 9th inter. I say: I have seen a certified copy of the specifications and drawings of William Woodworth's patent granted to him in 1828, and I am of opinion that that specification and those drawings would enable any competent mechanic to construct what is commonly known as the Woodworth planing machine. I have also seen a specification of Bentham's machine contained in the 10th volume of the Repository of Arts, and, in my opinion, the machine described therein by Bentham, and that made by Woodworth, are entirely dissimilar. I consider the said description by Bentham of his machine as very vague, loose, and indefinite; and unaccompanied with drawings, as it is, I believe no mechanic would be able to construct a planing machine therefrom. I consider the planing tool referred to by Gen. Bentham as the extension longitudinally of a circular saw, or, in fact, a wide circular saw, and that such a tool would rasp and tear the wood, but would not plane it. I consider the feeding or pressure rollers, for the purpose of conveying the wood or plank to the cutting tool or cylinder, and *also for holding the same down* during the operation of planing, as indispensable, and as constituting one of the distinguishing and most essential features of the Woodworth planing machine. I consider that, in Bentham's description, before referred to, he only intends to describe several modifications of a circular saw, and not a planing machine. In fact, I have seen the description referred to, under the head of sawing *machinery*, in an English Encyclopœdia, entitled machines and machinery of Great Britain, by Peter Barton, being compiled from the Encyclopœdia Metropolitana. I have seen a drawing purporting to be a representation of the defendants' machine, (marked A, W. W. S.,)and so far as I can gather any information as to the principles of that machine from the said representations, it seems to me that the shaft of the planing apparatus is inclined to the surface of the board, and not vertical; and if such be the case, in my opinion the cutting apparatus is substantially

similar to Woodworth's planing cylinder, as it would cut under and take off the same kind of shaving or chip.

EZRA LINCOLN, Jr.

Sworn to before me.

W. W. STORY,
U. S. Com'r, Mass. District.

Joseph Nason's deposition.

Deposition of Joseph Nason.

Joseph Nason, being duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, answereth as follows the interrogatories hereto annexed and prefixed:

To the 1st inter. he saith: I never did see the machine enquired about.

To the 2d inter. he saith: I do not know.

To the 3d inter. he saith: No drawing is exhibited.

To the 4th inter. he saith: I am an engineer, and am acquainted with the principles of machinery. I was formerly a mechanist, and have been lately employed in the construction of machines of various kinds.

To the 5th inter. he saith: No drawings or explanations *is* exhibited.

To the 6th inter. he saith: I never did see the machine enquired about.

To the 7th inter. he saith: I have not seen the machine enquired about.

To the 8th inter. he saith: I do not. I have not seen machines for planing made by the same persons who made the two for the Wilsons, to my knowledge, for I do not know who made these machines.

To the 9th inter. he saith: I have seen a certified copy of the patent granted to Woodworth in 1838 for his planing machine, and I am of opinion that, from the specification and drawings, any skilful and competent mechanist would be enabled to construct a planing machine substantially the same as that now known as Woodworth's planing machine. I consider the essential features of Woodworth's machine to be the revolving cutter, and the compressing rollers by which the material is moved forward to the knives and kept in its position. Any one who should build a planing machine, and apply the rollers for performing a similar office, would take an essential part of his machine. I have read the description of Bentham's machinery in the 10th volume of the Repertory of Arts. I think no machine is described there which would perform the operation of planing, in its technical sense. The operation would be more like sawing or burring; and such is usually applied to metals, but seldom to wood. There is no cutting tool described in Bentham's machine like the planing cylinder in Woodworth's machine. The two machines, in their operation, would be essentially different. I have seen the machines for cutting lasts and

gun stocks, known as Blanchard's machine, and I do not think that they would successfully perform the operation of planing. I have been for the last ten years practically engaged in the construction of machinery in this country and in Europe, and I am familiar with the construction and operation of all the machines in common use for working wood and metals.

JOSEPH NASON.

Sworn to by the said Joseph Nason before me.

W. W. STORY,
U. S. Com'r, Massachusetts District.

United States of America, district of Massachusetts, ss:

On this 12th, 14th, and 17th days of October, in the year 1844, the aforesaid Samuel Nicholson, Ezra Lincoln, jr., and Joseph Nason, personally appeared before me, and being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which this deposition was taken, gave the foregoing depositions, by them subscribed in my presence, and the same were by me reduced to writing in th*ar* presence, in answer to the interrogatories contained in the commission hereto annexed. Taken at the request of the —— ——, to be used in a cause now pending in the circuit court of the United States for the district of Kentucky, wherein E. V. Bunn and William W. Woodworth, administrator of William W. Woodworth, are complainants, and James Wilson and Benjamin Wilson are defendants; and the adverse party was duly notified. Given under my hand and seal on the day and year above noted.

W. W. STORY,
Commissioner of the Circuit and District Court of the United States for Massachusetts District, in the city of Boston.

Drawing.

The drawing in the foregoing depositions referred is on file among the papers in this cause.

See interrogatories by complainants, heretofore copied, page 42.

C. M. Kellar's deposition.

In pursuance of the authority contained in the annexed commission, to me directed by the 8th circuit court of the United States for the Kentucky district, I did, on the day of November, in the year 1844, at the patent office, in the city of Washington, and District of Columbia, proceed to take the deposition of Charles M. Kellar, of said city of Washington, and District of Columbia, as a witness for and on behalf of William W. Woodworth, administrator of William Woodworth, deceased, and E. V. Bunn, to be read in evidence in a certain matter of controversy now depending in the 8th circuit court of the United States for the Kentucky district, between William W. Woodworth, administrator of William Woodworth, deceased, and E. V. Bunn, complainants, and James Wilson, Benjamin Wilson, and Al-

pheus Wilson, defendants; the said Kellar, being first duly sworn upon the Holy Evangelists of Almighty God, deposeth and maketh to the following interrogatories the answers subjoined, "viz:"

1st interrogatory. Did you ever see and examine the machine used by the plaintiff, E. V. Bunn, in Louisville, for planing, tonguing, and grooving plank?

2d interrogatory. Do you know if there was a patent; and if yea, in whose name was the same for said machine?

3d interrogatory. Examine the drawing now shown to you, and say whether the machine used by the plaintiff, Bunn, is in principle the same as that described in the drawing?

4th interrogatory. What is your occupation; are you acquainted with the principles of machines?

5th interrogatory. Examine the drawing and explanations now shown to you, and say whether a machinist could, from the explanation or specification and drawing, construct said machine.

6th interrogatory. Did you see a planing machine in use by the defendants Wilsons, or some of them, in Louisville, in the year 1843; if so, was it or not on the same principle with that in the drawing to which you have before referred; if not, in what parts, or in what principle, was it a different machine?

7th interrogatory. Have you seen a planing machine now in use in Louisville by the defendants Wilsons, or some of them; say in what it is different from the one described in the drawings before shown to you; is the principle the same in each; and if not, in what does the difference consist?

8th interrogatory. Do you know who were the makers of the first and second machines used by the Wilsons, defendants, or some of them; have you seen other machines for planing made by the same persons who made the two for the Wilsons; do such machines differ from the planing machine for which Woodworth had a patent; if so, in what principle did they differ?

9th interrogatory. Do you know, or can you set forth, any matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer?

To interrogatory 1st the witness answers and says, he has not.

Answer to 2d interrogatory. He does not remember the grant of letters patent to E. V. Bunn for a planing machine; and not having seen the machine used by Bunn, in Louisville, cannot tell by whom it has been patented.

To the 3d interrogatory he answers, that no drawing of the machine used by the plff. being in the possession of the commissioner, the witness cannot answer this interrogatory.

To the 4th interrogatory witness answers that he is a mechanical engineer, and has specially devoted himself to the study of practical and

theoretical machines, and to the progress of inventions; that he is, and has been, examiner of patents in the United States Patent Office since the 10th of July, 1836; in which office it is his duty to examine such of the applications for letters patent as are assigned to him by the commissioner of patents, to ascertain whether the alleged inventions are novel, and the appropriate subjects for the grant of letters patent, under the provisions of law; and also to ascertain whether the specifications and drawings are sufficiently full, clear, and exact to fulfil the requirements of the statute; and if not, to point out the defects.

To the 5th interrogatory he answers, that he has, several times, examined, with great attention, in the discharge of his official trusts, and for the purpose of giving evidence in court and by his affidavit, the specification and drawings on which letters patent were granted to William Woodworth on the 27th day Dec'r, 1828, for a machine for planing, tonguing, and grooving boards; that he deems them sufficiently full and clear to enable a mechanist, "skilled in the art, to make, construct, and use" from them a machine substantially similar to the machines known as the Woodworth planing machine, and in general use under that name; that the omissions of proportions and dimensions in the specification and drawings *is* not essential, as these are matters which generally are, and ought to be, left to the judgment of the constructor, who, if he be skilled as a mechanist, has been taught, in acquiring a knowledge of this profession, the rules and methods of proportioning and adapting all kinds of machinery to the purpose in view, to the quality of the work to be done, and to the quantity of the work to be executed, and the amount of power at his disposal; that the number of revolutions of the planing cylinder, or rotary plains and cutters for tonguing and grooving relatively to the velocity of the board, must depend upon the kind of material to be operated upon, and the quality of the surface to be obtained; and that all these various circumstances and the vast variety of changes could not have been anticipated by the inventor at the time he made the application for letters patent; that there are very few specifications on which letters patent have been granted since the existing patent laws have been in force, which give the proportion and relative velocities of the moving parts; and that in the discharge of his official trust he has, on many occasions, advised applicants for patents to omit these details, as tending to render the description of the essential part, viz, the invention, obscure, and tending also, from the great difficulty, if not impossibility, of imagining the vast variety of modifications in those, which must and do occur when an invention is reduced to a general practice; for if the proportions and relative velocities are given, the constructor will be apt to follow them without considering the change of circumstances, instead of relying upon his judgment and the known rules of practice that govern mechanical structures.

To the 6th interrogatory witness answers, that he has never seen the machine used by defendants, Wilsons, or any one of them.

To the 7th interrogatory witness answers, the same as to the 6th interrogatory.

To the 8th interrogatory witness answers, that he knows nothing about it.

To the 9th interrogatory witness answers, that he has carefully, and on several occasions, examined the patent granted to the said William Woodworth, for a planing, &c., machine, with the view of ascertaining the principle or character which distinguishes it from other machines before known to him; that it differs from other machines before known, or which he has seen in use, or described in printed publications: first, in so connecting the plane-irons with the stock as to give a free discharge to the shavings in a place of sufficient length to extend over the width of a board, and to enable the constructor to give such angles to the surfaces of the plane as to perform the operation of planing or shaving instead of scraping. 2d. In the employment of rollers on the top of the boards, and near the planing cylinder, to prevent the board from being lifted up from its bed by the action of the plane in cutting upwards; for, without these rollers, or something substantially similar, the board would be lifted up by one cutter and met by the succeeding one in its descent; and, consequently, gashed or notched, instead of being planed smooth. And, 3dly, in the employment of rotating cutters for tonguing and grooving the board in combination with the rotating plane for planing the surface. That the operation of this machine is essentially the same, whether the board be fed into the machine by what is known as feed-rollers, without a carriage or with a carriage, or with a carriage moved by means of rollers, rack, or pinion, or any of the then known modes of feeding; and that the only difference arising from the use of any of these modes would be in the time necessary for preparing the machine for the reception of another board; the feed rollers without the carriage being the most expeditious; and that these various modes of feeding were well known at the time the patent was granted to the said William Woodworth, and understood by mechanical engineers and mechanists, and, therefore, a description of these was unnecessary to enable a competent or skilled mechanist to employ any of them in a Woodworth planing machine; that he has repeatedly examined the letters patent granted in England to Samuel Bentham for certain tools or instruments for working wood, &c., as published in the London Repertory of Arts and Patent Inventions, vol. 10th, page 221; and that in this work he has been unable to find the description of an organised machine for planing, or for planing, tonguing, and grooving boards substantially similar to the one invented and patented by the said William Woodworth; that the said Bentham describes a variety of tools for reducing and shaving wood, but that the cutting roller therein described corresponds with what is known as a burr cutter, which scrapes, but cannot plane or shave, as these terms are understood by mechanics, and that there is no mode described for holding down the board to its bed to prevent the action of the cutter from lifting up the board, as above fully stated; that he was called upon in his official capacity to examine

into the question of novelty of the said patent granted as above stated to William Woodworth, and to compare it with Bentham's, Bramah's, and other planing machines or tools for working wood, &c., known prior to the date of said Woodworth's patent; and that after coming to the conclusion and opinions, as herein expressed, and being aware of the importance of the question, he consulted the other examiners in the Patent Office, who, after being carefully cautioned as to the importance of their decision, fully concurred with him in the views and facts as now expressed in this affidavit.

That he has seen the Woodworth planing machines in operation, and has paid special attention to the mode of their operation, with a view of comprehending the rationale of its success; that he was present when an attempt was made to plain without the pressure roller to hold the board down, and that it could not be done, the board being drawn up and cut into deep gashes, and sometimes long splinters split out more than a foot in length; that he examined the description of the planing machine invented by Bramah, in England, in 1802, published in Ree's Encyclopedia, under the article of Planing Machine, and that it is essentially different in its mode of operation and in its structure from the one patented to William Woodworth, on the 27th day of December, 1828; the planing operation, instead of being performed, as in Woodworth's, by means of plain irons attached to a rotary stock, in lines parallel with the shaft, so as to generate a cylinder in their revolution, and when acting on a board gradually approaching, cutting into, and rising from the surface of the board, and thus performing what is generally understood among mechanics as a dubbing operation, and thus planing the surface, which when examined presents a series of segments of hollow cylinders, effects this purpose by means of cutters attached to the face of the rim of wheel or arms with their cutting edges at right angles to the shaft, and passing over the surface of the board in segments of circles, commencing at one edge, passing around to the other, and continuing in their rotation back to the first; these circles following each other in succession and at distances apart, dependent on the relative velocities of the cutters and the board, and the number of cutters attached to the wheel; by this arrangement the cutters are in contact with the surface of the board the whole time of their passage over the board; whilst in the Woodworth machine, the cutters or plane irons are in contact with the surface to be planed only during a short portion of their circuit; and from the fact that the cut is upwards after they have reached the lowest portion of their circuit, there is no tendency to tear the surface of the board, the plane irons are not liable to heat, and are only kept in action during the time necessary to perform the necessary cutting; whilst in the Bramah machine the cut is in one direction parallel with the surface of the board, and therefore tends to tear up the surface, and, by passing in curves over the surface of the board and in contact with it during the whole of their circuit over the board, they are necessarily subjected to a much longer action than in Woodworth's machine, are more liable to heat and to wear. These obvious defects in

Bramah's machine have prevented it from being generally employed, although the inventor was one of the most ingenious, persevering, and successful inventors of England. These defects were remedied after the Woodworth machine was in successful operation, by giving to it one of the essential characteristics of Woodworth's machine, which was effected by attaching the cutters or plain irons to wheel or shaft, with their cutting edges at such an inclination as to generate a cone, by which modification the plains cut in and up, performing a dubbing operation, planing the surface by a series of segments of hollow cones, instead of segments of hollow cylinders, which latter modification he deems substantially similar to Woodworth's.

CHS. M. KELLER.

Commissioner's Certificate.

Washington county, District of Columbia, November 16, 1844.

I hereby certify, that the foregoing deposition of Charles M. Keller was taken and by me reduced to writing, and by the said Keller subscribed and sworn to before me, at the patent office, in the city of Washington, and District of Columbia, on the 16th day of November, 1844; and I further certify that I am a justice of the peace in and for said county of Washington, and District of Columbia, duly commissioned and sworn.

D. SAUNDERS,
Commissioner and Justice of the Peace.

See the interrogatories of complainants and defendants, copied heretofore, pages 42, 43, 44, and 45.

B. Jackman's deposition.

In pursuance of the authority contained in the annexed commission, to me directed by the 8th circuit court of the United States for the Kentucky district, I did, on the 31st day of May, 1845, at the law office of Morehead and Reed, in the town of Frankfort, in the State of Kentucky, proceed to take the deposition of Benjamin Jackman, as a witness for and on behalf of William W. Woodworth, administrator of William Woodworth, deceased, and E. V. Bunn, to be read in evidence in a certain matter of controversy now pending in the 8th circuit court of the United States for the Kentucky district, between William W. Woodworth, administrator of William Woodworth, deceased, and E. V. Bunn, complainants, and James Wilson, Benjamin Wilson, and Alpheus Wilson, defendants; and the said Benjamin Jackman, being first duly sworn upon the Holy Evangelists of Almighty God, deposeth and saith, to the following interrogatories, the answers subjoined, viz:

In answer to the first interrogatory, he states: I have examined the model now shown to me, marked George Martin and W. E. Glover, and the two machines there found are different in form, in the application of the cutters, but are the same in principle; the operation in each is performed by revolving upon a common centre.

In answer to 2d interrogatory, he states: I have examined the planing knives attached to these machines; the figure of their operation is different, but the principle of their operation is the same, both cutting upwards upon the dubbing principle, the one revolving cylindrically, the other conically.

In answer to interrogatory 3d, he states: That the cutters attached to the part of the model called Bicknell's machine operate, like the other, upon the edge principle, and not on the drawing knife principle; the mechanical cause of this similitude is, that both set of cutters revolve upon a common centre.

In answer to the 4th interrogatory, he states: I do not regard the principle upon which the cutters in the two models operate as at all different.

In answer to the 5th interrogatory, he states: I have examined the specifications and drawings of Woodworth's patent, and state that there would be no difficulty whatever in building Woodworth's planing machine, from said specifications and drawings, by any scientific and practical mechanist.

In answer to 6th interrogatory, he states: I have never read a description or seen drawings of any machine similar to that of Woodworth's, in all respects, in any work or book. I have read in Rea's Cyclopedia an account of Bentham's patent, granted in or about 1793, and Bramah's patent, granted in 1802, with the drawings of Bramah's patent; there are essential differences between these patents and that of Woodworth; the great and essential difference between them is, that Woodworth's operates as stated in a previous answer, and Bentham's and Bramah's operate upon the principle of face-turning. There is a difference in the two machines in the application of binding rollers to keep the plank in its place, as well as in relation to the rotating cutter wheels for tonguing and grooving. Bentham's and Bramah's had no such cutter wheel for tonguing and grooving at the same time of the facing.

In answer to the 7th interrogatory, he states: I have seen other machines prior to December, 1828, for the purpose of planing plank, but entirely different in operation and principle, being a common plane stock with bits inserted, and moved by a crank movement.

In answer to the 8th interrogatory, he states: I do not know that I understand exactly what is meant by this interrogatory. All cones have a right line, and the cutter does not come in contact with the plank until it is parallel with its axis, and the cylinder cuts precisely upon the same principle. The cutters in Bicknell's machine being placed upon curves, revolving upon a vertical axis, and that axis being inclined in such way as to make the cutter touch the plank only when it becomes parallel with its axis, and then rising, is in principle precisely the same as Woodworth's cutters, both cutting upwards, and on the dubbing principle, and cutting only when parallel with its axis, and if it did not so cut, the plank would not be planed with the two surfaces parallel to each other.

In answer to interrogatory No. 9, he states: I have examined both machines minutely, and as I have stated in the previous or foregoing answer, the knife in Bicknell's machine cuts only when it is parallel with its axis. It cuts in this instance diagonally, but always in a straight line from its axis. Woodworth's cutters, placed on a cylinder and skewed, as it is sometimes called, would also cut the plank diagonally, but would only cut in a straight line, and when it becomes parallel with its axis; the operation of Bicknell's cutter, at the point of contact between the knives and boards, is not such as to describe a cone of any kind.

In answer to 10th interrogatory, he states: There is no difference.

In answer to 11th interrogatory, he states: I have already answered this question.

In answer to the 12th interrogatory, he states: I know nothing about it.

In answer to the 13th interrogatory, he states: I know nothing further that would be to advantage of either party.

Cross interrogatories.

In answer to the 1st interrogatory, he states: I have examined the specifications of Woodworth's patent, and find no reference in the specifications to a model or drawing. I have also examined the model of Woodworth's machine, and state, that it is a model of a machine such as is described in the specifications of Woodworth's patent, as far as it goes—the moveable frame and the rack and pinion and moulding cutters are not attached to the model. This model is for planing, and tonguing, and grooving plank only, in the place of the rack and pinion rollers, are placed for the purpose of feeding the board to the cutters.

In answer to 2d interrogatory, he states: I think the specifications of Woodworth is for an aggregate machine, but he evidently claims as an invention, the improvement and application of cutter wheels, and also his improved method of cutters for tonguing and grooving, and it is certain that they may be used singly or separately. The invention of the cutter wheels for tonguing and grooving consist in their application, and, as applied by him, is an improved method, and I am satisfied that he was the first person who ever made this application of cutter wheels, and may be truly said to be the inventor. His cutter wheels, thus applied, were entirely new to me, and I have been a practical mechanist for the last 30 years, and in the habit of examining machinery of every kind coming within the sphere of my observation.

In answer to the 3d interrogatory, he states: I have already stated that I considered Woodworth's specification intended to obtain to a patent for an aggregate machine, yet in the construction of the machine, he claimed as his invention the application of cutter wheels—his improved method of cutters for tonguing and grooving, and the application of pressure rollers. The mechanical tools used were previously separately known and used, that is to say, the adze was a tool well known and used previously, but never attached to cylinder so as to operate as

the machine does; nor were the other tools, as far as I know, ever applied, either jointly or separately, in the manner or mode applied by Woodworth. I understand the invention of the circular saws has been disclaimed by Woodworth.

In answer to 4th interrogatory, he states: They were.

In answer to 5th interrogatory, he states: I know nothing more than is contained in the specifications of Bentham's and Bramah's patents.

In answer to the 6th interrogatory, he states: I do not.

In answer to the 7th interrogatory, he states: Not having the renunciation of Woodworth's administrator before me, I cannot answer this question.

In answer to the 8th interrogatory, he states: I am certain a scientific and practical mechanist could make a machine as described in Woodworth's specifications and drawings, without any invention on his part or experiment.

In answer to 9th interrogatory, he states: The principle of Woodworth's machine, as described in his specifications, consists in planing floor plank, &c., on horizontal or vertical centres, and in tonguing and grooving plank by cutter wheels, horizontal or vertical, the planing wheels to be so arranged as to cut on the dubbing process.

In answer to 10th interrogatory, he states: I know nothing further beneficial to the defendants in this cause.

BEN. JACKMAN.

Commonwealth of Kentucky, town of Frankfort, sct:

I hereby certify, that the foregoing deposition of Benjamin Jackman was taken, and by me reduced to writing, and by the said Jackman sworn to, before me, police judge of Frankfort, at the law office of Morehead & Read, in the town of Frankfort, Kentucky, on the 31st day of May, 1845.

And I further certify, that I am police judge of Frankfort as aforesaid, and am by law vested with all the jurisdiction and authority of a justice of the peace, and as such police judge, and duly commissioned and sworn.

Given under my hand, this 31st day of May, 1845.

L. HORD,
Police Judge of Frankfort.

Interrogatories by complainants.

BUNN & WOODWORTH
vs.
JAMES WILSON, &c.

Interrogations on behalf of the complainants.

Interrogatory 1st. Examine the model now shown you, marked "George Martin" and "W. E. Glover," and say whether the two machines there found are different in principle, or are the same; if different, in what does the difference consist?

Interrogatory 2d. Examine the planing knives attached to these ma-

chines, and say in what particular there is a difference as to their mode of operation; and also explain any difference there may be in the principle upon which they operate.

Interrogatory 3d. Do you or not find, on examining the knives attached to that part of the model called Bicknell's machine, that they operate like the *slur* on the adze principle, and not on the drawing knife principle. If you so find the fact, explain the mechanical causes of this similitude.

Interrogatory 4th. Do you regard the principles on which these knives operate as different, because, in the one instance, they are made to perform by the use of a vertical axis, while in the other they move upon a horizontal axis; or because, in the one instance, the knives, which actually cutting, may perform a circular figure upon the board, while in the other they take a direction parallel with the grain of the wood of the board.

Interrogatory 5th. Examine the specifications and drawings now shown you, and say whether you are of opinion that a scientific and practical mechanist would be able to construct a machine like Woodworth's, from the description there given.

Interrogatory 6th. Have you ever read a description or descriptions, or seen drawings of a machine or machines, similar to that of Woodworth's, in any work or book? If so, what machines were they, and in what works did you find them? Explain all the essential differences between such machines and this of Woodworth's.

Interrogatory 7th. Have you ever seen this, or other machines for the same purpose, in operation? If so, did you ever see a machine similar to this in principle, and in design and effect, prior to the month of December, 1828?

Interrogatory 8th. Will you examine the model of the machines before referred to, and say whether, to the eye, that of *Beckwith* does not seem at first sight to operate like a cylindrical cone, while the other presents the appearance, as it is in fact, of a true cylinder.

Interrogatory 9th. Will you now examine both machines minutely, and say whether in fact it turns out that the operation of *Beckwith's* cutter, at the part of contact between the knives and boards, is such as to describe the figure of a cylinder or cone.

Interrogatory 10th. Is there any difference between the figures described by the two sets of knives along the whole line of their actual contact with the boards?

Interrogatory 11th. At the point of contact between the knives of *Beckwith's* machine and the boards, what is the true figure described, and in what is it different from the figure that would be described by knives attached to a true cylinder?

Interrogatory 12th. Do you know of the defendants' having sold the right bought of complainant to use the Woodworth's machine in the town of Albany, Indiana? If so, when was it, and to whom?

13th. Do you know, or can you set forth, any matter or thing which may be a benefit or advantage to the parties at issue in this cause,

or either of them, or that may be material to the subjects of this your examination, or the matters in question in this cause? If so, set forth the same fully and at large in your answer.

MOREHEAD & REED,
For complainants.

BUNN & WOODWORTH,
vs.
JAMES H. WILSON and OTHERS. } United States circuit court for the district of Kentucky.

J. G. Wilson's deposition.

The deposition of James G. Wilson, taken before me, William J. Howard, mayor of the city of Pittsburg, on the 23d day of May, A.D. 1845, in the city of Pittsburg, State of Pennsylvania, at the mayor's office in said city, to be read as evidence in a certain chancery suit depending in the United States Kentucky district court, circuit, holden in Frankfort, Kentucky, wherein Wm. W. Woodworth, administrator of William Woodworth, and Edward V. Bunn are complainants, and James Wilson, Alpheus Wilson, and Benjamin Wilson are defendants.

The said deponent having been first carefully examined, cautioned, and sworn to tell the whole truth, doth depose and say, that he lives a greater distance than 100 miles from the said town of Frankfort; and furthermore he saith, in answer to the interrogatories propounded by complainants hereto attached, I, James G. Wilson, of the city, county, and State of New York, now in the city of Pittsburg and State of Pennsylvania, do depose and say, to the first interrogatory:

I have examined the model referred to, and consider the two machines which it represents substantially the same, in principle, character, or mode of operation. There are, however, some unimportant differences in the two, which do not in any manner affect the character or mode of operation; and, to distinguish these differences, and point them out, I will state what constitutes the characteristics of the Woodworth machine, or what distinguishes it from all other things before known, viz: In so arranging the plain irons, and connecting them with the stock or shaft, as to leave a free discharge for the shavings, and enable the constructor to make their faces at such angles as to perform a shaving instead of a scraping operation, and so connecting them as in their rotation to gradually approach the surface of the board and cut into it, and then cut upwards; in leaving the board, to pass around, preparatory to another operation, the board being carried forward against the edge of the plains, and at the same time held down to prevent the action of the plain in cutting upwards from lifting up the board, and also in combining with a rotary plain cutting wheels for tonguing and grooving the edges of the board.

The other machine represented in this model, and known as the "Bicknell machine," involves all these features or characteristics, and differs only in so connecting the plain irons with the stock and shaft, as, in their rotation, to generate a cone instead of a cylinder, this difference not changing in any manner the mode of operation, viz: gradually ap-

proaching the surface of the board, cutting into, and then upwards in leaving the board, to passs around for another cut.

To the 2d interrogatory, I do depose and say: I have examined the plain irons or knives in these two machines, and do not find any difference in them. In the two machines they are of sufficient length to extend across the whole width of the board, and can only plane the whole width by being made of such length, and they are also placed at a planing instead of a scraping angle. The mode of operation of these planing irons or knives, I have pointed out in my answer to the first interrogatory; but, with the view to define more clearly the peculiarity of the mode of operation, I will add, that the cutting edge of the plain iron or knife in the "Woodworth machine," does not commence to cut until it nearly reaches a place parallel with the shaft, and radiating therefrom, and perpendicular to the surface planed; so that the whole or nearly the whole, cut is upwards from the surface planed. The commencement of the cut being the 30th part of an inch forward of the perpendicular line, more or less, in proportion to the amount of feed or progressive motion given to the board between each cut; so that, for all practical purposes, the cut may be said to be from that perpendicular line upwards, and, by reference to the Bicknell machine, it will be seen that the same effect is produced in the same manner—that the knife commences the cut along the same plane, radiating from the shaft, and parallel therewith, and perpendicular to the surface planed, or nearly so—and the only difference is, that the surface planed in one is parallel with the shaft, and in the other at an acute angle therewith, proportioned to the cone generated by the rotation of the knives.

To the 3d interrogatory I do depose and say: That the knives on Bicknell machine do, like those on the Woodworth, cut on the edge principle, and do not leave the draw cut. In the Bicknell machine, the edges of the knife form an angle with a line parallel with the shaft; and Woodworth states, in his specification, that the knives on his cylinder may be placed obliquely; this will place the edge of the knife, in both machines, obliquely to the line of motion, and any one point on the edge of the knife, in its motion, retains the same position relatively to the axis of motion, and any knife which has but one motion cannot gain the draw cut, which is the result of two motions; for example, a reciprocating knife may be placed obliquely to its line of motion without leaving the draw cut; but if it receives a compound motion, it will then make the draw cut, whether its edge be oblique or at right angles with the forward motion.

The compound motion of a knife can alone give it the draw cut, and the obliquity of the edge of the knife to the line of motion has nothing to do with it; for, unless any one point on the edge of the knife during the cut changed its position relatively to the line of motion, the draw cut cannot be given. But whether the knife does or does not make a draw cut, still the mode of operation of the knife pointed out as one of the features of the Woodworth planing knives, that is to say, the cutting into the board and then upwards, is the same.

To the 4th interrogatory I do depose and say: That neither of these machines work with a vertical axis when the surface of the board is horizontal; but in Bicknell's machine the shaft forms an acute angle with the face of the board, and the knives, as I stated above, in their rotations generate a cone, which could not be the case if the shaft were perpendicular to the face of the board. In the Woodworth machine the knives make the cut in a direction parallel with the edges of the board, whilst in the Bicknell they pass over the board in curves; but as the cut is only during a small portion of the circuit of the knives, the cut may be said for all practical purposes to be parallel with the edges of the board, as in the Woodworth; this does not, however, in any manner effect the mode of operation.

To the 5th interrogatory I do depose and say: That I have often had machines and models made from the specification and drawings of the Woodworth patent, and have had no complaints made by the mechanics that the specification and drawings were insufficient; and I do believe them to be sufficiently full and clear to enable any skilful mechanic to construct from them a good operative machine for planing, tonguing, and grooving.

To the 6th interrogatory I depose and say: That I have seen a description of certain tools for working wood and other materials, as published in the Repertory of Arts, &c., vol. 10th; but I do not think that this gives a description of an organized machine for planing similar to Woodworth's, either in construction or mode of operation, either planing alone, or for planing, and tonguing, and grooving. The tools described in this work are simply burr cutters, such as are now well known in the arts for shaping by scraping or rasping, instead of shaving or planing.

To the 7th interrogatory I do depose and say: That the first machine which I ever saw for planing, and tonguing, and grooving, was at the dry dock in the city of New York, about the month of December, 1828, invented and put in operation and superintended by William Woodworth, the patentee. It was a vertical machine and worked well. Since that time I have seen hundreds of planing machines, and all of them were on the same principle and mode of operation.

To the 8th interrogatory I depose and say: That I do not consider the Bicknell machine as a cylindrical cone. The knives in their rotation, as stated above, generate a cone, and perform the same operation as the cylinder, and in substantially the same manner.

To the 9th interrogatory I depose and say: That where the two knives in the two machines come to the finishing contact of the board at a line radiating from the shaft, (as expressed in answer to the second interrogatory,) they leave the same finish on the board, so far as the eye can distinguish.

To the 10th and 11th interrogatories I depose and say: That this question is fully answered in the preceding.

To the 12th interrogatory I depose and say: That I do know that the defendant, James H. Wilson, sold the right referred to to Peter Story, of New Albany, Indiana, with one of the Woodworth planing

machines, for the sum of $1,400, of which sum $900 was allowed for the patent right. I drew up the assignment and witnessed the whole transaction.

To the 13th interrogatory I depose and say: That the defendant, when I inquired of him how he could consider the right good in New Albany and yet resist the patent in Louisville, said that he did not contend that the Woodworth patent was not good, but that he considered the machines used by him different from the Woodworth patent.

JAMES G. WILSON.

Mayor's certificate.

I, William J. Howard, mayor of the city of Pittsburg, State of Pennsylvania, duly elected, sworn, and acting as such, and in law and by virtue of my said election acting as such, do certify, that at the request of the said complainants I caused the abovenamed James G. Wilson, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, because the said witness resides at a greater distance than 100 miles from the town of Frankfort, the place of holding the said court of the United States, as is stated; and I did not cause any notice to the adverse party of the time and place of taking, because the said adverse party does not, as I know or believe, reside within 100 miles of the place of taking the same; nor has the said party any agent or attorney, known to me, within that distance. That the said deposition was by me wholly reduced to writing in the presence of the witness, and that he then and there subscribed the same; that I am not of counsel or attorney for either of the parties or interested in the event of the cause. All which is certified to the court as the cause wherefore this deposition is taken, and the manner it is done.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] corporate seal of the city of Pittsburg, this 23d day of May, in the year of our Lord 1845.

WILLIAM J. HOWARD, *Mayor.*

John Locke's deposition.

State of Ohio, city of Cincinnati, sct:

Be it remembered, that on this 16th day of November, in the year of our Lord 1844, before me, Henry E. Spencer, mayor of the city of Cincinnati, in the State of Ohio, aforesaid, under and by virtue of an act of Congress entitled an act to establish the judicial courts of the United States, personally appeared John Locke, residing in said city, a witness of lawful age for and on behalf of the plaintiffs in a certain civil cause depending in the court of the United States in and for the 8th circuit and Kentucky district, holden in Frankfort, wherein E. V. Bunn and W. W. Woodworth, administrator of William Woodworth, are complainants, and James Wilson, Benjamin Wilson, and Alpheus Wilson, are defendants; and the said witness being by me first carefully examined, and cautioned, and sworn to testify the whole truth, makes oath, deposeth, and saith, that he resides in the said city of Cincinnati,

and State of Ohio, and more than 100 miles from Frankfort aforesaid, the place of trial of this cause; furthermore he saith:

Question by complainants. What is your occupation, and are you acquainted with the principles of mechanics?

Answer. My present occupation is the professorship in chemistry in the medical college of Ohio. I am acquainted with theoretical and practical mechanics, and can execute work in wood and in metals.

Question by same. Are you acquainted with Woodworth's patent for a planing machine, and with the machine as actually made?

Answer. I am well acquainted with both the same.

Question by same. Is the model of a machine now before you, marked "A, seal of the city of Cincinnati," a correct representation of the machine described in Woodworth's specification?

Answer. The model before me is a model of two machines; one part of it, (that part or end on which is the seal,) is essentially a model of the machine described in Woodworth's specification, with the unimportant difference that the board in Woodworth's specification and drawings is represented on edge, whilst in this model it is represented flatways or horizontal, in the manner in which the Woodworth machine is now commonly used.

Question by same. Have you ever seen the specification and drawings of Woodworth's patent?

Answer. I have seen certified copies of the same as used in the suit of Brooks vs. Bicknell and Jenks, in the United States circuit court.

Question by same. From your knowledge of mechanics, do you suppose a person could build the machine from Woodworth's specification and drawings?

Answer. I think a mechanist could build Woodworth's planing machine from his specifications and drawings.

Question by same. Have you ever seen the planing machine used by Bicknell and Jenks, in the city of Cincinnati?

Answer. I have seen said planing machine.

Question by same. State wherein the model before referred to, marked A, resembles said planing machine of Bicknell and Jenks.

Answer. The end, or part of the model opposite to this, marked A, City of Cincinnati, is essentially the machine used by Bicknell and Jenks, especially in having the axis of the bits or cutters placed obliquely, and the cutters revolving in such manner as to describe an obtuse cone.

Question by same. State whether you do or do not consider the last machine, viz: that in which the cutters revolve in an obtuse cone, as in that of Bicknell and Jenks, an infringement on Woodworth's patent.

Answer. I do think it an infringement, and the essential principle of the two machines the same.

Question by same. State whether you consider said patent of Woodworth's entirely original.

Answer. I do, having never seen any description of any invention identical with said machine.

Question by same. Have you ever read the specification of Bentham's patent, granted in or about 1793?

Answer. I have; the machine patented by said Bentham I consider would not answer the purposes of the Woodworth's machine.

Question by same. State if you know any thing else which may bear upon the matter in controversy in this suit.

Answer. Inasmuch as Woodworth's patent claims the evident modifications necessary for cutting various mouldings, and as deeply excavated mouldings would require cutters revolving on an axis not parallel, but perpendicular, or oblique to the plain of the board operated upon, I consider that patent as including the machine in which the cutters revolve on an oblique axis, and describe by revolution a cone or cone-like solid.

JOHN LOCKE.

Mayor's Certificate.

State of Ohio, city of Cincinnati, sct:

I, H. E. Spencer, mayor of the city of Cincinnati, State of Ohio, under and by virtue of an act of Congress entitled an act to establish the judicial court of the United States, do certify that, at the request of the complainant in the cause mentioned in the foregoing deposition, I caused the deponent therein, John Locke, to come before me, at the time and place mentioned in the caption; and I further certify, that the reason for taking the said deposition of John Locke is, that the said witness lives in the city of Cincinnati aforesaid, more than 100 miles from Frankfort, the place of the trial of said civil cause, depending as aforesaid in the circuit court of the United States for the district of Kentucky, and that no notification was given to said defendants, nor to any agent or attorney of the same, to be present at the taking of said deposition, and to put interrogatories, if he or they might think fit; because neither the said defendant, nor any attorney or agent of said defendant, resides nor is within 100 miles of the said city of Cincinnati, the place of taking said deposition. I do further certify, that I am not counsel or attorney to either of the parties in said deposition mentioned, nor interested in the event of the said civil cause depending between said parties; that the said deposition was reduced to writing by me in presence of the said witness, and signed by him in my presence.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the corporate seal of said city, the 16th day of November, 1844.

H. E. SPENCER, *Mayor.*

The following are the depositions on the part of the defendants, to wit:

Caption.

Depositions of sundry witnesses, taken before me, John Kiblera, a notary public within and for the county of Hamilton, State of Ohio,

on the 13th day of January, in the year 1845, between the hours of 10, A. M., and 3, P. M., at the office of Charles L. Tilford, esq., in Cincinnati, in said county, pursuant to the annexed dedimus and mutual agreement of the parties, also annexed, to be read in evidence in behalf of the defendants, in a certain matter of controversy now depending in the 8th circuit court of the United States in and for the district of Kentucky, wherein James Wilson et al. are defendants, and W. W. Woodworth, administrator of W. Woodworth, et al., are plaintiffs.

Isaac Straub's deposition.

Isaac Straub, of lawful age, being duly cautioned, and solemnly sworn, deposeth and saith as follows, in answer to each of the several questions in the interrogatories and cross interrogatories appended:

To the first interrogatory his answer is as follows: I have seen the patent, with the drawing and specifications annexed; this was at the trial in the circuit court U. S. for the district of Ohio, at Cincinnati, last July or August; I have also seen the machine under the patent at work in Brook's mill, several times before that trial took place; I would just remark here that Mr. Story, the man who was attending Brook's mill, and also the machine under the patent, told me, some time I saw him at Brook's mill, before the trial, that the machine then and there in use was not the original Woodworth patent, but had been remodelled. I have been engaged for the last fifteen years in different mechanical operations, but have never learnt a trade; I have been engaged in constructing machines, mills, and bridges, and also in planning them, for the last fifteen years; by this time, I have taken out five different patents for mechanical inventions, all of which were my own inventions; I have also carried on a pretty heavy mechanical business within the last fifteen years.

To the 2d interrogatory his answer is as follows:

Mr. Bentham describes the planing head as well as Woodworth. I cannot call it an improvement particularly. Mr. Bentham describes the planing head just as Woodworth has made it, with the exception of the moving head in Woodworth's. I believe that Bentham's planing head will work as well as Woodworth's. My mind can't comprehend what Woodworth does claim, by saying that "he claims the improvement and application of cutter or planing wheels, &c." I can't tell, indeed, what Woodworth does in reality claim. The application of the cutter wheel to planing boards was known and used before by Bentham. Woodworth's patent is not for a new invention; the only improvement in the patent I see is the combination of the circular saw with planing heads, which, however, I understood has since been disclaimed. The principal difference between Bentham's and Woodworth's is the combination of the tonguing and grooving with the planing head. If Woodworth's patent claims any thing, it must be, as it really is, only a combination of tools known before. My opinion is, that no man—I cannot—can make a machine to operate with certainty from Woodworth's drawing and specifications alone, in the absence of size, as to

length, width, and breadth, diameter or velocity, width of band and revolutions; all of which are necessary to enable a mechanist to construct a planing machine. I consider Woodworth's specifications and drawings very good hints to construct from. If ten good mechanists were to build each a Woodworth machine, by taking for a guide the specifications and drawings of Woodworth, without any intercourse with each other whatever, when complete, bring these machines together, can any one suppose they would be alike in size, alike in proportion, alike in operation? or would any of them operate at all? There is much uncertainty, surely.

To the 3d interrogatory he answers as follows: I have no knowledge, nor have seen any machine as spoken of in the question; the first planing machine I saw at Baltimore in the year 1833, which I suppose was Woodworth's.

To the 4th interrogatory he answers as follows: I have not seen machines upon the same principle as that patented by Woodworth, described in any book of science prior to 1828. I have, however, seen Bentham's description of a planing machine published in the Repertory of Arts, in a paper which, at the last trial in the circuit court held at Cincinnati, was published as an extract from Bentham's specifications, and admitted as such by the two parties litigant. Bentham's and Woodworth's machines do not differ in principle, the difference between them consists in combination.

To the 5th interrogatory he answers as follows: I have seen circular saws in use prior to 1828, in workshops, for splitting up stuff. I think Woodworth's specification is not explicit enough to put up the circular saws in combination with the machine, without experimenting.

To the 6th interrogatory he answers as follows: I have no knowledge whatever of the matters and facts alluded to in the question.

To the 7th interrogatory he answers and says: I have seen Mr. Bicknell's machine put up in Cincinnati, Ohio. Bicknell's machine is not substantially the same as the one patented to Woodworth in 1828. The two machines agree in the fact that they both plane boards, and tongue and groove them; they disagree in all the material parts of form—

1st. Woodworth describes the axis of his planing head horizontal and vertical, and Bicknell's axis to his planing head, to the surface of the board, is neither horizontal nor vertical. This I consider one of the principal differences.

2d. The planing head described by Woodworth describes a cylinder, that of Bicknell's an inverted cone.

3d. The whole edge of Woodworth's knife, when in motion, passes through the same and an equal space, while revolving, which is not the case with Bicknell's, the end of one edge of whose knife passes through a greater space in a revolution than the other end.

4th. There is another difference; Woodworth's knife, in revolving, passes over and under the shaft vertically; Bicknell's knife, in revolving, never changes sides, and never tumbles over, on the principle of a somerset, as Woodworth's does.

5th. Another difference is, that Bicknell's machine, with two knives, will plane double the quantity in a given time that Woodworth's will plane at the same time with four knives.

6th. There is a difference in action of the knife upon the surface of the board in the two machines; Bicknell's cuts upon the shaving process from level to point; Woodworth's machine cuts upon the dubbing process, the whole length of the knife, operating at the same time with all parts of the edge at once. The shaving made by the two machines are unlike, the surface of the board, when finished, is unlike. Woodworth's machine requires a higher speed than Bicknell's, as *principle* is not patentable. I don't know what is meant by the term. Suppose a fine thread was drawn on the edge of all the knives in Woodworth's and Bicknell's machines, each chord extending beyond the end of the knives, it will be seen the threads at one end in Bicknell's would cut each other at apex; the other ends would widen farther and farther; in Woodworth's the threads or chords would be parallel, never cross each other, however long; place the machines of Bicknell and Woodworth side by side, put them in motion, suppose all the knives in each machine were instantly disengaged, how different their direction; the knives of one would dart off partly endwise and partly horizontal, the other sidewise and vertical. The centrifugal force would operate differently on the law of gravitation, in the supposed flying off of the parts. On this principle of well known laws, the chips or shavings are cast off unlike in the two machines. Put the two machines at work, any person acquainted with machinery can tell them apart blindfolded, from the noise alone. The sound produced is unlike; the travel of the knife in one is nearly in a direct line with the plane of the board and grain of the wood; the other machine is unlike in operation; hence the unlike sound.

To the 8th interrogatory he answers as follows: As no drawings are shown me, I cannot answer the question.

To the 9th interrogatory he answers as follows: At present, I remember nothing.

Answers to the cross-interrogatories, by complainant, Bunn, to the interrogatories of the defendants, as appended.

To the cross-interrogatory, marked 2d, he answers as follows: It is my opinion that Woodworth's patent, if it is any thing, is a combination of known tools, as described by Bentham. In my opinion the invention of any new machine consists in the changing of form, as well as in the arrangement or combination of old and well known parts. Either change of form, or new arrangement, is invention, provided they amount to novelty.

To the cross-interrogatory, marked 3d, he answers as follows: I refer, for an answer to this cross-interrogatory, to my answer to the 3d direct interrogatory above.

To the cross-interrogatory, marked 5th, he answers as follows: I refer for answer to my answer to the direct interrogatory, No. 5.

To the cross-interrogatory, marked 6th, he answers as follows: I refer you to my answer to the 6th direct interrogatory above.

To the cross-interrogatory, marked 7th, he answers as follows: I can't produce such drawing now, but I can make one.

To the cross-interrogatory, marked 8th, he answers as follows: I have not the drawing here, so I can say nothing about it.

To the cross-interrogatory, marked 9th, he answers as follows: I have stated all I know that is material.

ISAAC STRAUB.

The further taking of this deposition was postponed until the 21st day of January, 1845, to be taken at the office of Kebler & Egan, city of Cincinnati, Hamilton county, Ohio. January 21, 1845, approved.

Jacob Stephens' deposition.

Jacob Stephens, who being duly cautioned and solemnly sworn, answers to the several interrogatories and cross-interrogatories appended, as follows:

To 1st interrogatory he answers as follows: I have seen the specifications and the drawing of the Woodworth patent, at the trial in the circuit court of the United States, held in Cincinnati last summer. I have also before me the specifications of Woodworth's patent, in the record accompanying this commission. I have seen the machines which were claimed to have been put in operation under that patent, in the city of Cincinnati, at Mr. Brook's mill, and other places. I am a mechanist, and have been so the bigest part of the time for 25 or 30 years past.

To the 2d interrogatory he answereth as follows: I could not say whether the Woodworth patent is for an improvement on an old machine, or for a new invention. If the patent is for an improvement, I cannot tell from the specifications in what the improvement consists. If the patent is for a new invention, it is neither a combination of old mechanical tools nor an invention of new mechanical tools, for both the combination and the tools, used in the Woodworth patent, are old. If the patent claimed a combination of the process of planing boards, and tonguing and grooving them at the same time, then I would have considered the patent as one for a combination, and would have considered that combination as new. I could not build a planing machine from those specifications, because it don't give me any idea which I had not before. As for the idea of building a machine from these specifications, without making experiments, it is impossible for any mechanist, though I believe that they furnish very good suggestions from which a mechanist may invent.

To the 3d interrogatory he answers as follows: I had a machine in operation for planing and grooving at the same time, in the year 1822, in the State of New York, Dutchess county, in the town of Fishkill. I had no need of the operation of tonguing. That machine, I should not say, did operate upon the same principle as Woodworth's, for in my machine the knife or knives were set on a face-plate; in Wood-

worth's machine they are on a cylinder, and according to my notions of principle, I should consider the two machines different in principle.

To the 4th interrogatory he answers as follows: I have seen machines for planing, tonguing, and grooving, embracing all that Woodworth describes, described in Ree's Encyclopedia; what number I cannot tell. This was as early as the year 1816 or 1817. I consider the machine I saw described in Ree's Encyclopedia made and operating on the same principle as Woodworth's is; though the machines to which I refer were made to operate upon metal, and not upon wood.

To the 5th interrogatory he answers as follows: I used circular saws for reducing boards to a width myself as early as 1815. I consider the specifications in Woodworth's patent not explicit enough to enable a mechanist to put up this part of the machine in connection with the other parts of the machine, without some invention.

To the 6th interrogatory he answers as follows: I know nothing about the matters and things contained in this interrogatory, except from hearsay.

To the 7th interrogatory he answers as follows: I have seen Bicknell's machine put up at Cincinnati, Ohio. I should think that machine very different from that patented by Woodworth in 1828; and I do not think the two machines are substantially alike; on the contrary, I think them substantially different; neither Woodworth's nor Bicknell's have a carriage as described in Woodworth's patent, for both propel the boards by rollers. The two machines, as I have seen them constructed and operating, the one at Brook's mill, and the other [at] Bicknell's mill, resemble each other in this: that they have both pressure feed-rollers; also the tonguing and grooving knives or cutters are similar in both machines, and here ends the similarity. Now, the difference in the cutter-heads in the two machines is this: 1st. Woodworth describes the cutters as the knife placed upon cylinder heads, parallel or diagonal to the axis of the cylinder; but I know it is impossible to plane a plain surface with knives placed upon the cylinder head, diagonal to the axis of the cylinder; such a knife, in a diagonal position to the axis of the cylinder, would plane a convex surface; whereas Bicknell's cutter arms are placed upon a shaft, nearly in a vertical position; but they stand a little oblique, at an angle of about ten degrees from a vertical position. Also Bicknell's knives enter the board at one edge and increase in depth until they come to be at right angles with the edge of the board; whereas Woodworth's knife, as described in the specification, strikes the whole width of the board at the same time with every part of the edge. There is another difference: Bicknell's knife leaves the board just as it enters the board, by what I call a scooping process; whereas Woodworth's enters and leaves the board with a dubbing process; about all the difference in the machines is in the cutter heads and knives attached thereto.

To the 8th interrogatory he answers as follows: As no drawing is shown to me, I cannot answer this.

To the 9th interrogatory he answers as follows: I don't think of anything more now.

To the cross interrogatories he answers as follows:

To cross interrogatory marked 2d, he answers as follows: I know nothing about that, as I don't know what Woodworth's patent is for: whether for an improvement on an old machine, or for a combination. I can't answer the latter part of the question, as I don't know what it means.

To the cross interrogatory, marked 3d, he answers as follows: The object of my machine was to plane and cut into a circle, and bore bobbin heads at the same time; in my machine the board was forced to the cutter by a screw; the carriage on which the board was placed was attached to this screw. The machine was simply this: it was placed upon a spindle, in a horizontal position, and the spindle was the face-plate; and through this face-plate were the plane irons; and at the outer edge of the plane-irons was the bit for grooving; I sometimes used one, sometimes two bits. In the centre or axis of the spindle was a bit for *bearing* a hole through the centre of the head; the board was forced up to this face-plate by a carriage attached to a screw, and the board was planed to a thickness, cut into a circle, and bored at one and the same operation.

To the cross interrogatory, marked 5th, he answers as follows: Not having the drawings here, I can't state exactly, though I have seen the drawing and had my eye upon it during a few minutes at the circuit court here. I can say, however, with certainty, that I could not construct a machine from Woodworth's specifications; and from what I saw of the drawing, a great part of the detail of the machine I should have to study out myself.

To the cross interrogatory, marked 6th, he answers as follows: I know nothing of any decisions on the subject.

To the cross interrogatory, marked 7th, he answers as follows: I can make a drawing of Bicknell's machine.

To the cross interrogatory, marked 8th, he answers as follows: I can say nothing, as no drawing is shown me.

To cross interrogatory, marked 9th, he answers as follows: I know nothing else particularly now.

JACOB STEVENS.

H. F. Miller's deposition.

At the same time and place appeared Henry F. Miller, who, being duly cautioned and solemnly sworn, answers as follows to the several interrogatories and cross interrogatories appended.

To the 1st interrogatory he answers as follows: I have seen the specifications, the drawing, and the patent for Woodworth's machine. I have not seen any machine except that one at Brook's mill and at some other places. Subsequently building planing machines, directed my attention more especially to them and their construction. I am a mechanist myself, and have been carrying on a machine shop for the last

eight years. I have made among other machines, also planing machines.

To the 2d interrogatory he answers as follows: I could not tell whether Woodworth's patent is for an improvement on an old machine, or for a new invention; if it is an improvement on an old machine, I cannot tell in what that improvement consists from the specifications; there are no new tools about the Woodworth machine. If it is for a new invention, it is not for the invention of new mechanical tools. I cannot tell, from the specification, whether Woodworth claims a new combination or new mechanical tools. In my opinion, no mechanist could construct a planing machine from Woodworth's specifications, without some invention on his own part.

To the 3d interrogatory he answers as follows: I cannot tell whether or not, but even before the year 1828, I used similar tools with those in Woodworth's machine, namely, last lathes for cutting lasts. I built machines for this purpose; the cutters used in these machines were placed upon a cylinder, and operated upon the same principle as the cutters in Woodworth's planing wheel, though the shape of the cutters was of course different.

To the 4th interrogatory he answers as follows: I don't remember of any ever crossing my way. I have seen drawings, however, at different times, of different sorts of machines for planing and cutting up stuff, before the year 1828. I could not say, however, whether those machines worked upon the same principles as Woodworth's, nor can I say in what particulars those described machines differed from Woodworth's, as I did not charge my mind with them.

To the 5th interrogatory he answers as follows: I have seen circular saws used for cutting boards to a width long before the year 1828. The specifications in Woodworth's patent are not sufficiently explicit to enable a mechanist to put up this part of the machine, in connection with the other parts, without invention and experimenting. Take the specifications and drawing of Woodworth's patent, which I have seen, and give them to our very best mechanists in the city, tell them to construct a machine each, without any communication, and if they can construct one at all, they will differ from each other in some material part.

To the 6th interrogatory, he answers as follows: I know nothing of the matters and things referred to in this question.

To the 7th interrogatory he answers as follows: I have not only seen, but also made, Mr. Bicknell's machine, put up at Cincinnati in the spring of the year 1843. Bicknell's machine is not substantially like Woodworth's, patented in the year 1828; the two machines are similar in the side heads which are used for tongueing and grooving, except that Bicknell's side heads have pointed bits, which are not called for in Woodworth's specifications; also have more knives than Woodworth's side heads; also Bicknell's side heads are different from Woodworth's in point of form and construction. The Woodworth specifications call for a carriage; but there is no carriage at all in the

Bicknell machine. The two machines differ in the method of feeding the board through. Mr. Bicknell's machine feeds by friction rollers; the specifications of the Woodworth machine call for a rack and pinion, and a carriage ; they also differ in the construction and the form of the cutting head which planes the board. Woodworth's machine has a cylinder with the knives placed parallel or diagonal with the axis of the cylinder. Mr. Bicknell's head is different, as it stands on an axle, about ten degrees from a right angle line, with the arms placed in a dishing form, similar to the spokes in a wagon wheel—the knives cut a spiral shaving ; the motion of Bicknell's knives is a sort of a sweeping motion, a regular longitudinal spiral cut ; whereas Woodworth's knives act upon the board by a dubbing process. Woodworth's machine calls for a circular saw for reducing the board to a width. Mr. Bicknell's machine has no circular saw, but after using a circular saw to reduce the board to a width, Bicknell's machine has jointed bits for greater accuracy in the reduction of the board to a specific width. Woodworth's description has no jointed bits. I do not recollect any other material difference between the two machines.

To the 8th interrogatory he answers as follows: As there are no drawings before me I can't answer the question.

To the 9th interrogatory he answers as follows: If in Woodworth's planing wheel the knives are placed diagonal to the axis of the cylinder, I know they would not plane a plain surface. It appears that Woodworth here is claiming something about which he knew nothing.

To the cross interrogatories he answers as follows :

To the cross interrogatory, marked 2d, he answers as follows : I can't state any thing about it, as I don't know what Woodworth claims or intends to claim in his patent.

To the cross inter., marked 3d, he answers: I refer to my answer to the 3d direct interrogatory.

To the cross inter., marked 5th, he answers as follows: A mechanist could not, without using his own invention.

To the cross inter., marked 6th, he answers as follows : I refer to my answer to the 6th direct interrogatory.

To the cross inter., marked 7th, he answers as follows : I can make either the machine itself, and also the drawing.

To the cross inter., marked 8th, he answers as follows : I refer to my answer to the 8th direct interrogatory.

To the cross inter., marked 9th, he answers as follows : I have nothing that I wish to say additional.

HENRY F. MILLER.

R. C. Phillips's deposition.

At the same time and place appeared Robert C. Phillips, of Cincinnati, of lawful age, who, being duly cautioned and solemnly sworn, deposeth and saith as follows, in answer to the several interrogatories and cross interrogatories appended.

To the 1st interrogatory he answereth as follows: I am a mechanic,

and have followed the business for about 15 years. I have seen the certified copies of the specifications and drawing of Woodworth's patent planing machine. I have seen several put in operation under the patent of said Woodworth, and have examined said machines carefully, and believe I understand the principles upon which they act, and have seen them in the city of Cincinnati. I have been specially conversant with these subjects for the last 12 or 15 months.

To the 2d inter. he answers as follows:

W. Woodworth's claim is for "the improvement and application of cutter or planing wheels to planing boards, plank, timber, or other materials; also his improved method of cutters for grooving and tongueing and cutting mouldings in wood, stone, iron, metal, or other material; and also for facing and dressing bricks." He also claimed "the application of circular saws for reducing floor plank and other materials to a width;" but this has been disclaimed, as I have been informed. In the specification of Samuel Bentham, for a patent granted in England, 1793, (which may be found in the 10th volume of the Repertory of Arts, &c., published in 1799,) the said Bentham clearly described a machine for cutting by circular saws, and claims to be the first to adopt "the rotative motion of a tool, with more or less advantage, to giving all sorts of substances any shape that can be required." Said Bentham also describes, in the same specification, various modes of guiding the material to be worked by friction rollers, &c.; he also describes various kinds of "circular cutters" made of "annular segments, sharp irons," &c.; he also describes a cutting roller to perform the office of a plane; he also speaks of a rotary cutter board, or narrow plane, or formed to a moulding; he also speaks of "annular segments fastened to an included cylinder; and that he practiced with particular advantage the planing roller." From the foregoing, and much more contained in the specification of Bentham, it is manifest that rotating cutters of almost every variety had been in use, and applied to planing boards, and various other materials; and also that circular saws were applied by said Bentham to reduce stuff of various kinds to a width and thickness; and that these tools, bits, and planes, and saws, &c., were described with much precision. Woodworth's claim is for improvement and application of cutters or planing wheels to planing boards, timber, or other material; also his improved method of cutters for grooving and tongueing. The application had been made before, in my opinion; and I am utterly unable to ascertain from Woodworth's specification and drawings what his improved method of cutters is, for the reason that none is shown; and I cannot therefore say in what the improvement consists. I regard his machine as I have seen it operate as a combination of known mechanical tools and movements, but so entirely unlike what his drawings and specifications present to the mind, that I should not have known it was intended for the same machine, if I had not ascertained from other sources that such was the fact; the machine as used, and the machine as described, are widely different; and indeed, I regard the specification and drawings as being so vague and indefinite

that no mechanist could build a working machine from it without much invention and considerable experiment.

To 3d interrogatory he answers as follows: I do not know.

To the 4th interrogatory he answers as follows: I have seen machines described similar to those of Woodworth, as now used, in several books. The volume of the Repertory of Arts, above quoted, and another work which I once owned, but sold to a gentleman in Louisville, whose name I have forgotten, and the name of the book also, described a machine which I thought very near like those I had seen of Woodworth's; that book was published, if I mistake not, in London, in 1835, and the specification dated in 1801. I cannot recollect the name of the patentee.

To the 5th interrogatory he answers as follows: I do not know any more than I have stated above.

To the 6th interrogatory he answers as follows: I know nothing of the facts alluded to.

To the 7th interrogatory he answers as follows: I have seen the machine invented by Mr. Bicknell, in this city; I have made three drawings, in plan and section, of said machine, and one in perspective with sections. I am well acquainted with the principles, combinations, movements, and arrangements of said machine, and have no hesitation in saying that it is essentially different, in the application of the principles of its action, in its combinations and arrangements, from the machine described by Woodworth. Woodworth describes his machine as having knives and cutters, fixed upon logs by screws or bolts, to cut mouldings, or with knives or cutters attached to heads by the same means, the edge of the knife being parallel with the axis, or placed diagonally; knives or cutters placed as described here will describe regular curves, or will generate a cylinder in their motion; but if the knife be straight, as I think Mr. Woodworth meant it should be,) it cannot plane a flat surface, but will give a surface having a convexity varying in proportion to the circumstances of the length, angle, and diameter. The knife, if placed parallel with the axis of the cylinder, and straight, will plane a flat surface in its rotation, by cutting into and out of the board or other material, somewhat as an adze is made to do, when the workman causes it to move in a right line drawn through its centre, while in its other direction it is made to describe part of a circle, or other curve; this has been called the "dubbing principle." The machine of Mr. Bicknell has its planes or cutters attached to the arms of a wheel or centre, in such a manner that the edge of the knives or cutters, in their revolutions, describe a conical figure much like what would be shown by stretching a piece of canvass closely over the convex face of a common carriage wheel; the shaft or axis of this wheel is placed at such an angle with the plane of the board to be dressed, that the edge of the plane bit shall be parallel with the face of the board at that part at which it cuts deepest into the board; the bit is not placed with the line of its edge coinciding with a line drawn from the centre of the shaft to the circumference of the wheel, but forming an angle

with the above described line of about six degrees; I think that *is* a line coinciding with the edge of the bit, and protracted in the direction of the shaft, would fall back of the centre of the shaft some four inches in a working machine. It will be seen from the above that a combined curve is described in the revolutions of these bits, very difficult to describe, and for which I have no name; and that, while it cuts into and out of the face of the board, a kind of reciprocating motion is given to the bit, transversely or across the board, and the cut of a bit so situated will resemble that produced by taking a knife and cutting into and out of a stick, drawing the knife at the same time across the stick, but it would be more nearly similated if the knife could be drawn across and back again during the same cut. In these particulars, and many others I might enumerate, I consider the machines essentially and entirely different; I consider that the side heads used by Bicknell are the same, in principle, as those used in the machines known as Woodworth's, and I see no difference between the principle of these and those described by Bentham; they are only circular cutting wheels, with peculiar cutters, acting on the same principle and much in the same manner as a circular saw.

To the 8th interrogatory he answers as follows: No drawings are shown me, and so I cannot tell.

To the 9th interrogatory he answers as follows: I think now of nothing else.

Answers to the cross interrogatories appended.

To cross interrogatory, marked 2d, he answers as follows: Principles are eternal, and, so far as mechanical principles are concerned, I suppose they are all known; I suppose that new combinations may be, indeed are, constantly made; also that new arrangements and new tools may be, and are, often discovered and applied with great advantage to the world. I see but little, if any thing, in the plan specified by Mr. Woodworth that in my opinion was new, unless it be the combination of planing and tonguing and grooving boards at the same operation, which I do not understand him as claiming at all, and which I have reason to believe was done long before the date of his patent in Scotland and England, though I have not the means of knowing certainly that it was; (my knowledge is hearsay on this point.)

To cross interrogatory, marked 3d, he answers as follows: I refer to my answer to the 3d direct interrogatory.

To the cross interrogatory, marked 5th, he answers as follows: I do not think he could, without invention and experiment; and, if he could, I feel well assured it would not plain boards to any purpose.

To cross interrogatory, marked 6th, he answers as follows: I refer to my answer to the 6th direct interrogatory.

To the cross interrogatory, marked 7th, he answers as follows: I have made several, and suppose I could do it again.

To cross interrogatory, marked 8th, he answers as follows: The specification, as set forth as a description of a machine for a particular

purpose, not a movement is given; nor a size, nor a velocity, nor an angle of inclination, for any single tool about it, not a letter of reference; all which I deem somewhat important, and some of them indispensable. I turn to a drawing, I find no letter of reference, no scale, and the parts I suspect of being one thing so shaped and situated, in relation to other things, that I am in doubt and uncertainty about the whole matter, or nearly so. Mr. Brooks, of Cincinnati, who had used one or two of the machines called Woodworth's some ten or twelve years, and who claims to know considerable about machines, and who was certainly interested in the matter, admitted to me, after he had filed the very drawing of which I speak in the circuit court of the United States, that he could not understand how the machine there represented could plane a board, until he got another man to explain it to him. I do not see that it follows necessarily that, because I do not learn, from a vague and indefinite description of a complicated machine, how to construct such a machine, that therefore I could not discover, by any examination of a still more vague and clumsy drawing, that it was not in accordance with the specification, nor a plan of a machine suitable or competent to plain, tongue and groove "boards, plank, and other material."

To cross-interrogatory marked 9th he answers as follows: I have seen pretty good mechanics say they could construct a machine, from these specifications and drawings, to plane boards; and I have heard others say the two machines were the same in principle, and this on oath, too; these men have seen many planing machines, and I have no doubt could construct a very good one, without either specifications or drawings. My own opinion, as to the principles on which the two machines perform the work, was somewhat different.

R. C. PHILLIPS.

The further taking of these depositions was postponed until the 25th day of January, A. D. 1845.

January 25th, 1845; appeared at the same place.

J. H. Story's deposition

Jeremiah H. Story, of lawful age, who being duly cautioned and solemnly sworn, deposeth and saith as follows, in answer to the several interrogatories and cross-interrogatories appended:

To the 1st interrogatory he answers as follows: I have seen Woodworth's patent and specifications, and drawing representing his machine. I saw one or two machines, which were said to be under his patent and specifications. In the spring of the year 1834, I engaged with Messrs. Brooks & Longworth to attend his planing machine, and have continued to attend that planing machine until the present day. This was a machine put up under the patent of Woodworth. These are the opportunities which I have had to become acquainted with the principles of the machine: soon after, as the first machine was found to be deficient in point of strength, and the mode of operation, it was altered and improved in various respects, and some material particulars; from time

to time this machine has been in operation at Cincinnati, Ohio. I am practically a mechanist, and think I am acquainted with the principles upon which machinery act.

To the 2d interrogatory he answers as follows: As Woodworth speaks of his improved method of cutters, I suppose it may be an improvement upon a machine of which I do not know. I think his may be an improvement upon some old machine; of what I don't know, because not described in the specifications; I don't think it is a new invention. I suppose Woodworth's is an improvement, because he says so; as I do not know what the old machine was, I cannot, of course, tell in what Woodworth's improvement of it consists, and how far, and in what particular, he has improved it. I do not think it is a new invention, for Woodworth does not claim it as such. I think that his specification is not sufficient to construct a machine, without invention on the part of the mechanist. The invention the man would have to make would be considerable; Woodworth gives no sizes to any part of his machine.

To the 3d interrogatory he answers as follows: I do not know.

To the 4th interrogatory he answers as follows: No.

To the 5th interrogatory he answers as follows: I do not know whether the circular saws were in known use in the United States prior to the year 1828; nor do I think that a mechanist can put up one for use, in connexion with the other part of the machine, from the specifications as they are, without additional invention.

To the 6th interrogatory he answers as follows: I know nothing of the matters and things alluded to in this question.

To the 7th interrogatory he answers as follows: I have seen the planing machine invented by Mr. Bicknell, of the city of Cincinnati, Ohio, and have looked at the machine several times with considerable attention. I do not think that his machine is substantially like that patented by Woodworth. To look at the description of Woodworth and his specification, on one side, and Bicknell's machine on the other, they don't agree at all, only Mr. Bicknell's are cutter wheels, and so are Woodworth's; although the cutter wheels I do not consider alike. Woodworth's facing wheel was a cylinder, with the knives parallel or diagonal to the shaft; Bicknell's and Jenkin's facing plane has projecting arms, with knives attached to those arms. Those arms are shaped somewhat like cones or conic sections, and his shaft is inclined enough to fetch the arms on a horizontal line, and when in this position they commence their cut upon the board. The side heads, the tonguing and grooving apparatus, differ considerably; Mr. Bicknell and Jenkin's machine grooves and joints at the same time, Woodworth's grooved but did not joint; his jointing was done with circular saws, previous to the board being grooved. Woodworth describes a cylinder, Bicknell and Jenkin's being what I consider a conic section. I cannot tell whether the two are the same in principle or not; and not being a scientific mechanic, I don't wish to judge. Woodworth speaks throughout of a carriage, with rack, and pinion, and rollers, which were as friction rollers, as I suppose, though Woodworth does not say so; Bicknell and Jenkin's use

conducting rollers as friction rollers. Speaking of side heads, Woodworth calls his a circular plate, with knives attached; Mr. Bicknell's forms a regular head, with knives attached. I consider, also, that if Woodworth had had a jointer on his groove side-head, it would have been a great improvement. There are more differences than all these, but perhaps the most essential ones I have mentioned.

To the 8th interrogatory he answers as follows: As no drawings are shown me I cannot answer the question.

To the 9th interrogatory he answers as follows: Using the carriage, which Woodworth did, the board was placed upon the carriage and passed through the machine, the carriage was then run back to receive another board, and by this manner of operating there was a great loss of time; but Bicknell's machine obviates this loss of time, for he uses conducting rollers, and one board follows another without loss of time. Woodworth again speaks of his knife being placed diagonal; and his knife thus placed, unless it were ground rounding, would plane a convex surface, and in his specifications he gives no directions for making the knife rounding. I consider this as one of the defects in his specification. Woodworth speaks of grooving and rabitting only; his jointing was done with circular saws, previous to their being placed upon the carriage to be planed, but Bicknell's machine does all this by one and the same operation. By disclaiming the invention of the circular saw, Woodworth disclaims an essential part of his machine. I think of nothing else now.

To the various cross-interrogatories appended, he answers as follows:

To the interrogatory, marked 2d, he answers as follows: I do not know what machine it was upon which Woodworth claims to have improved in mechanical principles; there can be, at the present day, nothing new. There can only be a new mode of applying the principle. As to the rest of the question I don't know.

To the cross-interrogatory, marked 3d, he answers as follows: I can't describe any machine, because I had no opportunities of knowing them; I was not old enough.

To cross-interrogatory, marked 5th, he answers as follows: I have always said he could not, without invention on his own part.

To the cross-interrogatory, marked 6th, he answers as follows: I don't know of any such cases.

To the cross-interrogatory, marked 7th, he answers as follows: I believe I could sketch out the outline of Bicknell's machine; whether I could make a scientific drawing I don't know. I think I could not, for I was never instructed in the art.

To the cross-interrogatory, marked 8th, he answers as follows: No drawings shown me; but I saw the drawings about a year ago, and, if my memory serves me well, it represents the specification very well. The drawing represents the vertical cylinder, but not the horizontal one.

To the cross-interrogatory, marked 9th, he answers as follows: I have stated all I can call to mind at this time.

J. H. STORY.

Notary's certificate.

I hereby certify, that I am a notary public, within and for the county of Hamilton, State of Ohio, duly authorized by law; that Isaac Straub, Jacob Stevens, Henry H. Miller, Robert C. Phillips, and Jeremiah H. Story, were, by me, severally sworn to testify the truth, the whole truth, and nothing but the truth, in answer to each and every of the several interrogatories and cross-interrogatories, a copy of which is hereto annexed; that their depositions, in answer thereto, were taken before me, by virtue of the annexed dedimus and agreement of the parties, also annexed; that their several depositions by them respectively subscribed, as above set forth, were reduced to writing by me, and were taken at the several times and places specified above. I further certify, that I am neither of counsel nor attorney to either of the parties litigant, and am in no way interested in the cause.

Witness my hand and seal, this 27th day of January, A. D. 1845.

[L. S.] JOHN KIBLER, *Notary Public, within and for the county of Hamilton, State of Ohio.*

Caption to depositions.

The depositions of sundry witnesses, taken before me, a notary public, within and for the county of Hamilton, State of Ohio, on the 28th day of January, A. D. , at the office of Kibler & Egan, esqs., at Cincinnati, in said county, by virtue of the annexed dedimus and mutual agreement of the parties, also annexed, to be read in evidence in behalf of the defendant, in a certain matter of controversy now depending in the 8th circuit court of the United States, in and for the district of Kentucky, wherein James Wilson and others are defendants, and W. W. Woodworth, administrator, et. al., are plaintiffs.

Jno. Mitchell's deposition.

John Mitchell, of lawful age, being duly cautioned and solemnly sworn, deposeth and saith, in answer to the several interrogatories and cross-interrogatories appended:

To the 1st interrogatory he answers as follows: I saw the specifications, under the date, pretending to be the specifications of the Woodworth patent, and I have at this moment before me a copy of the Woodworth specifications of his planing machine in the record accompanying this commission. I have also seen machines put up under the Woodworth patent, as it was claimed, but they were widely different to what was pointed out in the specifications. These machines which I saw were in the city, (Cincinnati,) Brooks & Hughes; they were the first of the kind I had seen. I have been operating in machinery for some 12 or 14 years. I have been about it, and working at it, and making patterns and plans, and drawings, all this while. I made the first set of patterns for the Bicknell machine. I made the machine, except doing the iron work. I built its frame, made the patterns, and put all the iron on the wood, in the first machine of Bicknell & Jenkins. I claim

to have some little idea of the laws and principles upon which machinery act.

To the 2d interrogatory he answereth as follows: I believe that Woodworth's patent is for an improvement. In seeing the specifications of Bentham, as I have done, I should think Woodworth's was an improvement upon Bentham, if there is any improvement about it all. I would not judge that Woodworth's could be claimed as a new invention in toto. I could not, however, tell from the specifications of Woodworth in what the improvement consists. I am satisfied that a mechanist cannot, with the specifications alone, make a planing machine without much invention and experimenting on his own part, nor even with the drawings added, which I have seen and examined; for in the first place the drawing does not correspond to the specifications, nor does the drawing contain all that the present, so called Woodworth machine, contains; and contains matters which the present Woodworth machine does not contain.

To the 3d interrogatory he answers as follows: I can tell nothing about that, any more than what I have seen of the Bentham specifications.

To the 4th interrogatory he answers as follows: I never read of any, but I have seen an extract from the 10th vol. of the Repertory of Arts, giving a description of Bentham's specifications, and setting forth in full.

To the 5th interrogatory he answers as follows: I can't say that I have seen circular saws used to reduce boards, &c., to a given width, prior to the date of Woodworth's patent, but about the years 1827, 1828, and 1829, in one of those three, I saw a machine in Harrisburg, Pennsylvania, used to reduce *to reduce* boards to a given width, and to saw lathes with; the operation was carried on by circular saws. I do not believe that the specifications of Woodworth are sufficiently explicit to enable a mechanist to put up a circular saw in connection with the rest of the machine; the mechanist would have to plan, would have to invent, and must have some judgment, because it is not specified in Woodworth.

To the 6th interrogatory he answers as follows: I can't tell *no*thing about that, I have knowledge of it.

To the 7th interrogatory he answers as follows: I have seen the Bicknell and Jenkins' machine, and made the principal part of it, as I mentioned above. That machine is not substantially like the planing machine of Woodworth, it is very different. I saw very little agreement between the two machines, only this, that the two plane, and tongue, and groove, at the same time; but, after reading Woodworth's specifications, I should judge that that machine was meant to plane the board, and to tongue and groove it subsequently. I cannot think of any other agreement, except that they are made of wood, and steel, &c., and are driven by bolls, &c.; but that is not necessary, I suppose. In the first place, as to the disagreement of the two machines, Woodworth's specifications and drawings show a carriage, by rack and pinion, on which the board is propelled; in Bicknell & Jenkin's machine the board is moved

through by friction rollers, one above and one below; which friction rollers are held down and pressed upon the board by means of springs of steel.

2d. The two machines differ in this also, that the Woodworth machine planes the whole board first, according to the specifications, and tongues and grooves the board subsequently. Bicknell's & Jenkin's machine tongues and grooves first, and then planes the board.

3d. There is also a considerable difference in the form and manner of construction of the side heads, which tongue and groove; Woodworth calls them rabbiting wheels—two of them put together to form the tongue. Bicknell's side heads are horizontal, on vertical shafts; whereas Woodworth's side heads, according to the specifications, are vertical.

4th. The planing wheel is the great masterpiece of Bicknell; and there is as much difference between the appearance of Bicknell's and Woodworth's planing wheels, as there is between the plough and the harrow. The Woodworth planing head has a shaft, one head fast and the other loose, to accommodate any length of knife. Bicknell's is a planing wheel, and Woodworth's, take it all together, is a cylinder. Bicknell's is a planing wheel, with a shaft a little inclining from being vertical, and is dishing, inclining to a cone, and it has arms set into the shaft like spokes into a wagon wheel dishing, in which the knives are fastened; and when one of these arms, in its revolution, has come to be at right angles with the board, then the knife fixed to the arm is horizontal with the board, and begins to cut in a sweeping motion, rising in its horizontal position, in respect to the board, as it proceeds—Woodworth's shaft, being horizontal, the wheel makes a regular cylindrical motion. Woodworth's specification makes no mention of sizes, pulleys, &c.; nothing at all to enable one to get the speed and size. I do not know that there are any other material differences. The above specified ones are the principal differences, and indeed make up the whole machine themselves. The rollers, the side head, and the planing wheel, in the Bicknell machine, the various cutter knives, are fastened by screws fixed perpendicularly from the face of the knife, which I consider quite an improvement upon the fastenings of the Woodworth, even as at present used. There is certainly a very great difference in the operation of the two machines; yet, when the board is through, there it is both planed, and grooved, and tongued out of the same machine.

To the 8th inter. he answers as follows: I have no drawings before me, but I have seen both the specifications and drawings of Woodworth's *drawing*, and I can recollect the drawing quite; it differed from the specifications. I had the specifications before me, and made a plain model, just a simple thing, of wood, at Mr. Jenkins' request. When I saw the drawing I found that the two did not agree; but I recollect very well that there was a disagreement.

To the 9th inter. he answers as follows: I don't know anything but what I have stated. I believe I could state something about my opinion, and in reference to the advantages of one over the other. I have

said, and say now, that the arrangement of the Bicknell is the best that is, and may be, invented; it cannot be beat. I know we are in a progressive state; but I have looked and examined the Bicknell machine, and I don't see how it can be improved; I mean in the planing wheel.

To the several cross interrogatories he answers as follows:

To the cross interrogatory marked 2d he answers: I supposed that Woodworth claimed his as an improvement upon Bentham, if an improvement it is. I know little about the Bentham machine; I saw only the specifications, which I read, and I think his specifications of inventions were very indifferent.

To the cross interrogatory marked 3d he answers as follows: I refer to my answer to the 3d direct interrogatory. As for the lathing machine, which was also used to reduce boards to a width, above referred, to, its shafts lay horizontal, running upon centres; the saw was fixed in between two rollers on the shaft; the saw was driven by a belt with a pully shaft.

To the cross interrogatory marked 5th he answers as follows: I could not make a planing machine from Woodworth's specifications and drawings—I consider myself, too, a middling apt hand at catching up an idea; and yet, without inventing, and proportioning, and sizing, it would be impossible to make a machine. I suppose a good mechanist could not make a machine from Woodworth's specifications. Here, for example, Woodworth describes the shaft for his cylinder with a stationary and moveable head. Now, we don't know whether these heads are two inches in diameter or two feet, as big as spinning wheel spools, or a pair of timber wheels. How is a mechanist to get at the proportionate size without inventing? I made my model before from Woodworth's specifications, and was generally correct as to sizing and proportioning, but it was because I had seen the planing machines and their structure before in this city. If the specification of Woodworth, along with his drawing, were given to a hundred different good mechanists, who are kept apart from each other, and have never seen a planing machine operating before, I feel satisfied that the several machines produced by the several mechanists would appear very different from each other, if any of them produced any machine which would operate well at all, without greatly aiding the specifications and drawings by their own invention and experimenting. I remember now, at this moment, a difference between the drawings of Woodworth and his specifications; the specification supposes a platform, a carriage upon that platform; the drawings show a frame and carriage upon it; in the drawings there is no platform. In the specifications again, the board is represented as standing on its edge on the carriage, with the side heads operating upon the two edges of the board, one being perpendicular over the other; the shaft of the planing wheel rests vertically upon the platform, but in the drawing is represented as resting horizontally upon the carriage, and the side heads and planing wheel are placed accordingly.

To the cross interrogatory marked 6th he answers as follows: I know nothing of such cases.

To the cross interrogatory marked 7th he answers as follows: I have no drawing now of Bicknell's machines, but I could make the drawing now, and also make the machine, without resorting to any body or thing for information in regard to the arrangement, size, speed, &c. I am at present building a Bicknell machine.

To the cross interrogatory marked 8th he answers as follows: I have not the drawings here, but have seen them, and the particular in which the drawing differs from the specifications, so far as my memory serves me, I have mentioned above here and along, but particularly in my answer to the cross interrogatory marked 5th, at the top of the page.

To the cross interrogatory marked 9th he answers as follows: I can't claim to say that Bicknell's machine is an infringement whatever upon the Woodworth patented machine.

JOHN MITCHELL.

Jas. Todd's deposition.

At the same time and place appeared James Todd, of lawful age, who, being duly cautioned and solemnly sworn, deposeth and saith as follows, in answer to the several interrogatories and cross interrogatories appended:

To the 1st interrogatory he answereth as follows: I have seen the specifications of the Woodworth patent, granted in the year 1828, and have this moment them before me, in the record accompanying this commission. I have also seen two machines which were said to be Woodworth. I don't think, however, that they were built directly under the specifications and drawing of the Woodworth, though they were claimed to be so. These machines were put up in the city of Cincinnati, Hamilton county, Ohio, and operated by Brooks, and another one by Hughes. I have served a regular apprenticeship at machine making, and have been at it ever since, now about 24 years. Before I came to this State, I was for some time superintendent of a large machine shop in the State of Delaware, for making cotton and woollen machinery; and at the present I carry on a machine shop in the city of Cincinnati, on my own account. We fit up all sorts of work, make steam engines, cotton gins, threshing machines, &c.

To the 2d interrogatory he answers as follows: All I can say about that is, that here in his specifications he claims an improvement, and I should judge from that that it meant an improvement on an old machine. I don't think that it was a new invention. All I judge from, however, was his own specifications, the way they are worded. It cannot be ascertained from the specifications in what the improvement consists. I think no mechanist could build a planing machine from Woodworth's specifications without inventing himself. Take the specifications as they are, and have them as the only guide for constructing a planing machine, without having ever seen one before, a mechanist, in my opinion, would not make a working planing machine

without much invention and experimenting, when, of course, he would depart from the specifications.

To the 3d interrogatory he answers as follows: I can't be positive about the time exactly, but, so far as I recollect, it was about the year 1828; perhaps a little before, perhaps after. I recollect it from the fact that it was shortly after I was free. If my memory serves me, it was in the year 1828, perhaps as late as the beginning, when I saw, at the city of Philadelphia, in Pennsylvania, a planing machine, much resembling the one now in use by Brooks. That was used for working floor boards—for planing, tonguing, and grooving them at one and the same operation. The machine might have differed some little from the one now in use as the Woodworth patent, but materially it was the same. That is the first planing machine that I ever did see.

To the 4th interrogatory he answers as follows: I don't know that I have seen anything but Bentham's specifications for making tools and machines to operate upon a surface with rotary cutters. I have read it over, and believe they are to be found in the 10th volume of the Repertory of Arts, published in London in the year 1799. I think that the specifications of Woodworth and Bentham intend operating a planing machine upon the same principles, in so far as each machine, by the specifications, works upon the board by rotary cutters. I further believe that Bentham's specifications for a planing machine would make a machine as much resembling the present Woodworth machine, so called, as the present Woodworth machine resembles the one that must be made, if Woodworth's specifications and drawings are implicitly followed in the construction of one. I say that the Bentham and Woodworth machines are upon the same principles, because they both act upon the face of the board by knives or cutters placed upon a rotary wheel.

To the 5th interrogatory he answers as follows: I know that the circular saw to reduce boards to a width, and to split up stuff, was used in the United States long prior to year 1828. When I worked as apprentice, we had a circular saw fixed upon a shaft in our shop for those purposes. This was in the year 1824. I do not think that Woodworth's specifications are sufficiently explicit to enable a mechanist to put up one for use, in connection with the other part of the machine, without invention on his own part.

To the 6th interrogatory he answers as follows: I know nothing of the matters and things alluded to in this question.

To the 7th interrogatory he answers as follows: I have frequently seen the machine invented by Bicknell, in Cincinnati, and put there by him, in conjunction with Ebenezer Jenkins. *There* machine is not substantially like the Woodworth planing machine, patented in 1828. From all that I know about machines, the tonguing and grooving side heads are very near alike; they are not exactly alike, either. There is no very material difference about them, in my opinion, as they are now used, in the Woodworth machine, so called, and in the Bick-

nell; but between the specifications of the tonguing and grooving apparatus, as set forth by Woodworth, and the apparatus now used by Bicknell & Jenkins, there is a wide and material difference.

The two side heads made use of in the two machines agree in this, that they both tongue and groove, but they differ widely in the form of construction. The one is a circular plate, with knives attached to the sides. Bicknell's side heads are made of cast iron, and the bits inserted and held in by means of screws. They also have jointers set in the head, which Woodworth's specifications say nothing about. The two machines differ also in their planing wheels, in point of construction, rotation, and operation. Woodworth's specifications intend the planing wheel to be two heads placed upon a shaft, either vertical or horizontal; one of these heads moveable, the other fast; and knives bolted on them to form the wheel. Now Bicknell's wheel is placed in a conical shaft, that is, neither horizontal *or* vertical, with a wheel attached to it with two or more arms, in which the cutters are set in, and fastened by screws. Again: Woodworth's specifications call for a carriage, with a rack and pinion. In Bicknell's machine the board is fed through by friction rollers. Again: the specifications of the Woodworth machine seem to signify that the board is to be planed at one operation, and to be tongued and grooved by another operation; while in Bicknell's machine the board is planed, tongued, and grooved at one and the same operation. There is another difference. By the specifications of Woodworth, the side heads are placed one above the other, and the board passes between them edgewise; whereas in the Bicknell machine the board passes through flatwise. There are a good many other differences between the two machines; they are no ways alike, and I consider them two different machines entirely. Both the machines plane a board, but they do it by different modes, by different applications.

To the 8th interrogatory he answers as follows: I have no drawings shown me, though I have seen the Woodworth drawing.

To the 9th interrogatory he answers as follows: I don't know that I think of anything else now.

Answers to the cross interrogatories appended.

To the cross interrogatory, marked 2d, he answers as follows: I suppose Woodworth's patent is an improvement, because he says so; and I suppose it to be meant as an improvement upon the machine, as set forth in Bentham's specifications, referred to by me above. I believe that Woodworth's machine is only a new combination of known mechanical tools, for Bentham claims all them; that is, he claims the planing cylinder, the side heads, and circular saw. All a new machine consists in is a new application of some known mechanical principles before known; it is either a new tool or a combination of tools.

To the cross inter., marked 3d, he answers as follows: The machine was used for working floor boards. The cylinder, which was like the

one used now in the so-called Woodworth machine; and, indeed, the two machines were very much alike.

To the cross inter. marked 5th, he answers as follows: This is pretty hard to answer, for by his specifications it is hard to tell what he does patent.

The cross inter. marked 6th, he answers as follows: I know nothing of such cones.

To the cross inter. marked 7th, he answers as follows: I can make a drawing of the Bicknell machine.

To the cross inter. marked 8th, he answers as follows: I saw the drawing of the Woodworth patent some where in July or August last, and then thought it was different from the specifications; but I did not charge my mind with it, and can't now point out the *variances*.

To the cross inter. marked 9th, he answers as follows: I don't know that I can tell any thing more.

JAMES TODD.

Notary's certificate.

I hereby certify, that I am a notary public, within and for the county of Hamilton, State of Ohio; that John Mitchell and James Todd were by me severally sworn to tell the truth, the whole truth, and nothing but the truth, in answer to each and every interrogatory and cross interrogatory, a copy of which is appended herewith, the same as were used for the preceding depositions, and prefixed to them; that their depositions, in answer thereto, were taken before me by virtue of the dedimus and an agreement of parties hereto annexed; and that their several depositions, by them respectively subscribed, as above set forth, were reduced to writing by me, and taken at the time and place specified above.

I further certify, that I am neither counsel nor attorney to either of the parties litigant, and that I am in no way interested in the cause.

Witness my hand and seal of office, this 28th day of January,
[L. S.] A. D. 1845.

JOHN KEBLER, *Notary Public,*
within and for the county of Hamilton, State of Ohio.

L. Allberger's deposition.

On the 5th day of April, 1845, at the same place, appeared Lawrence Allberger, who, being duly cautioned and solemnly affirmed, deposeth and saith as follows, in answer to the several direct and cross interrogatories appended.

Answers to direct interrogatories.

To the 1st interrogatory he answers as follows: I have seen the patent and specifications of a rotary cutting wheel, but as they do not definitely describe a machine in full, only in part, I cannot say I have seen one of his put in operation. I am a mechanist, and have built a number of planing machines of different descriptions, together with a variety of other machinery.

To the 2d inter. he answers: I am unable to say whether W. Woodworth's patent is for an improvement on an old machine, or for a new invention. In my opinion, the specifications are not sufficient to enable a mechanist to construct a planing machine under the patent, without the aid of any invention on his own part.

To the 3d inter. he answers: There were two machines in the city of Baltimore, one of them for planing slate frames, the other was for making lasts, in operation prior to the date of Woodworth's patent. My answer here is according to the general acceptation of the word principle, which is a similarity in the mode of operating on the timber planed or reduced.

To the 4th inter. he answers: I have not seen machines answering his descriptions described in books of science.

To the 5th inter. he answers: I know that circular saws had been in common use prior to 1828, to reduce boards to a width. Nor are the specifications in the Woodworth patent sufficient to enable a mechanist to put up a circular saw, in connexion with the rest of the machine, so as to make an operating machine, without the aid of invention.

To the 6th inter. he answers: I do not know whether Woodworth failed to recover, in his lifetime, in a suit for the violation of his patent, because of proof made that he was not the inventor of the circular saw for reducing boards, &c., to a width.

To the 7th inter. he answers as follows: I have seen the planing machine invented by Bicknell, of the city of Cincinnati, Hamilton county, Ohio; it is not substantially like the planing head described and patented by Woodworth. The particulars in which they agree, I see none, except the side cutting wheel, for tonguing and grooving the edges of the boards planed—in these they are similar, except the jointing bits in Bicknell's. And they disagree in the planing head, the Woodworth specifications call for either horizontal or vertical shafts; the machines now in use, and all that I have seen in operation, are constructed with a horizontal shaft passing through a three or four winged head, to which the bits are fastened in a line with the shaft by means of bolts, said shaft extending across the frame, and supported by bearings or journals, which run in boxes—said boxes are fitted in grooves or slides, which are made to raise and fall by means of temper screws, to accommodate any thickness of boards desired to be planed, the boards passing down the centre of the frame under said wings, which, when put in motion from a cylinder, and are brought in contact with said bits, by which means said boards are planed or mouldings cut; the planing head or arms of Bicknell's machine are supported by an inclined upright shaft, said shaft is, being in an iron frame, running in a step at the lower end, and a box the top, fastened by bolts; the iron frame containing said shaft, planing head, or arms, is set crosswise a long frame, to which are attached, at or near one end, perpendicular slides opposite each other, with grooves or jaws into which said iron frame is placed, being supported at the top by a temper screw passing through the arch connecting said slides, by which means, of said temper screw, said iron frame, containing said

shaft, with the aforesaid head or arms attached, is made to rise or fall to accommodate any thickness of board desired to be planed. The planing head or arms of said machine, to which the cutting knives are fastened, extend across the board to be planed, first operating on the forward edge or corner of the board, next to the inclined upright shaft, and extending over to the outside, in a circular line, around to the after edge of the board planed, making a complete circle upon the surface of said board, which is carried under said arms and cutting knives by means of rollers, and planed, bearing a smooth level surface by the motion. It would be impossible to plane mouldings as in the Woodworth machine, as moulding bits, set in the arms of Bicknell's machine, would only cut the board or timber in gashes, thereby presenting a rough uneven surface by their circular motion from edge to edge of said boards or timber. The principles of said machines disagree in their modes of operation. The principle on which the Woodworth machine operates is that of the dubbing adze, when the sides of said adze are struck in a parallel line with the edge of the timber, with the blade extended across said timber to be dressed. It likewise operates on the same principle with the grubbing or garden hoe, which is struck to the earth in a circular form, from up to down, and if always struck in a straight line, a little in advance of the first cut, would leave a smooth surface, and if said hoe was made in the shape of moulding irons, would cut mouldings in the earth. The principle upon which Bicknell's machine operates is similar to that of the drawing knife used by coopers and others, which is drawn in a sweeping motion from right to left, by which means the timber is shaved or dressed. It is likewise similar in principle to that of the scythe, which is swept over the surface of the field in a circular form, and if said scythe was always struck in a straight line, the same height from the earth, would produce a level surface of the remaining stalks of grass or grain cut off; and if said scythe was bent in the shape of moulding irons, it could not be made to cut a smooth level surface, nor yet mouldings, owing to its sweeping circular motion. In this particular, the principles of the two machines differ widely.

To the 8th interrogatory he answers as follows: No drawings are shown me, so I cannot answer.

To the 9th interrogatory he answers: I have stated all I know in relation to the matter in hand.

Answers to cross-interrogatories.

To the cross-interrogatory marked 2d he answers: I refer to my answer to the 2d direct interrogatory, and I cannot answer this question.

To the cross-interrogatory marked 3d he answers: I refer to my answer to the 3d direct interrogatory, and I cannot answer this question.

To the cross-interrogatory marked 5th he answers: I think a skilful mechanist could not make the planing machine, as patented by Bicknell, from the specifications and drawings accompanying Woodworth's patent.

To the cross-interrogatory marked 6th he answers: I know nothing of the matters referred to in the question, and therefore cannot answer it.

To the cross-interrogatory marked 7th he answers: I cannot produce, but I can make the drawing alluded to.

To the cross-interrogatory marked 8th he answers: There is no drawing shown me, and I cannot answer.

To the cross-interrogatory marked 9th he answers: I have stated all I know. LAWRENCE ALLBERGER.

Caption to depositions.

The depositions of sundry witnesses taken before me, John Kibler, a notary public, duly commissioned according to law, on the 3d day of April, 1845, at the office of T. Walker, esq., in the city of Cincinnati, Hamilton county, State of Ohio, in conformity with annexed dedimus potestatum, in answer to the several interrogatories and cross-interrogatories appended to these depositions, to be read in evidence on behalf of the defendants in a cause now depending in the 8th circuit court of the United States in and for the district of Kentucky, wherein William W. Woodworth, administrator, et. al., are complainants, and James Wilson, et. al., are defendants.

J. Reynolds' deposition.

Jabez Reynolds, of lawful age, having been solemnly affirmed to speak the truth, the whole truth, and nothing but the truth, under the pains and penalties of perjury, deposeth and saith as follows, in answer to the several direct and cross-interrogatories appended, as follows:

Answers to the direct interrogatories.

To the 1st interrogatory he answers: I think I did once see the patent granted to Wm. Woodworth in 1828; the specifications I believe were attached. I have seen the Woodworth machine as now used; I built one of them for Brooks, another for Hughes, in the city of Cincinnati. I have been building and operating in machinery for the last twenty-five years; I have during that time been building cotton machinery and engines, and most of the kinds of machinery now in use, and a good deal of machinery not now in common use.

To the 2d interrogatory he answers: Whether the Woodworth patent is an improvement upon an old machine, or whether it is a new invention, cannot be answered by me; this I say, after having this moment again read over the specifications of the Woodworth patent which are before me, and which are said to have been used by the two parties litigant in the suit of Brooks et al. vs. Bicknell et al., at the trial in the circuit court of the United States in Cincinnati in July last, and which are appended to this deposition, marked exhibit A I don't think the specifications in the Woodworth patent are sufficient to enable a mechanist to build a working machine by, without the aid of invention on his own part.

To the 3d interrogatory he answers: As the specifications in the Wood-

worth patent are not so definite as to enable me to judge what machine could be made by them, I can't say that I have any knowledge, one way or the other, whether any machines on the principle of the Woodworth patent had been in use in any part of the United States prior to the date of Woodworth's patent.

To the 4th interrogatory he answers: This question, which asks whether machines upon the same principle as Woodworth's had been seen by me described in any books of science, covers an unlimited ground on account of the word "principles," which, in my opinion, were never invented, but their application is a matter to be invented. It is impossible for me to answer the question.

To the 5th interrogatory he answers: I know that circular saws were in use before Woodworth's patent in 1828, for the purpose of reducing boards to a width. I do not think that Woodworth's specifications are sufficient to enable a mechanist to put up a circular saw, in connection with the other part of the machine, without the aid of invention.

To the 6th interrogatory he answers: I know nothing of the matters and things referred to in this question.

To the 7th interrogatory he answers: I have seen the planing machine invented by Ben. Bicknell, and erected by Bicknell and Jenkins in the city of Cincinnati. I should think their machine was not substantially alike with that intended by the Woodworth patent and specifications. I am asked in what particular the Bicknell machine and that contemplated in Woodworth's patent agree. I answer, I can't tell what kind of a machine is exactly meant by the Woodworth patent. I am further asked, in what particulars the principles of the two machines agree, and in what they disagree. I answer to that, I am unable to say.

To the 8th interrogatory he answers: There are no drawings shown me, and therefore I cannot answer the question.

To the 9th interrogatory he answers: This is pretty much of a question, and I could talk a week on it. I think it was February, 1827, when I was at Somersworth, New Hampshire; I saw a machine used for the purpose planing boards and timber, with cutters in the face and also in the verge, and revolving plates and cylinders. I am not quite positive whether this was in 1827 or 1826; I am rather inclined to think that I saw the machine in Somersworth in the season of 1826; both cylinders and plates were rotary in their motion; the boards and timber were passed by the cutting surface, which was attached to a carriage moved by hand, by which means the surfaces were brought in contact with the cutters, and so planing produced. The cutting bitts in the cylinder machine and plate machine were set similar to plain bitts; both plate and cylinder machine were hung upon a horizontal axis or shaft, and driven by bands. In the cylinder machine the boards and timber were passed under or below the surface or periphery of the cylinder, and extended over the whole width of the piece that was planed; they planed only narrow stuff. I believe there were three or four knives in the cylinder, and the cylinder was about two feet in diameter. The plate

machine was about forty or forty-four inches in diameter, and the timber passed against the face of it below the axis. The Bicknell machine differs from the specifications of the Woodworth patent in so far as the specifications of the Woodworth patent describe a revolving cylinder, while the Bicknell machine consists of a diagonal upright or inclined shaft, with cutters attached to arms, which are so placed that in their revolution they are caused to pass upon the board and remove and shave off such quantities of timber as pass in the plane in which they revolve, by which means they reduce boards to a surface and thickness, which constitutes the planing.

Answers to cross interrogatories.

To the cross interrogatory, marked 2d, he answers: I do not know or understand whether the Woodworth patent is for an improvement on an old machine, or for a new invention. It is not in my power to answer anything in regard to this question.

To the cross inter., marked 3d, he answers: I don't know that I have seen machines work on the same principles as Woodworth's, as I hardly know the meaning of the word principles in its application in this question. I have seen machines in New Hampshire as above; but whether they would come under this question, as operating on the same principles as Woodworth's, I can't tell.

To cross interrogatory, marked 5th, he answers: The drawings are not presented; and as far as the specifications, I don't think a skilful mechanist could make a planing machine from Woodworth's specifications without the aid of invention on his own part.

To the cross inter., marked 6th, he answers: I know nothing of the matters alluded to in this question.

To the cross inter., marked 7th, he answers: I can't produce a drawing of the Bicknell machine, but I could make a drawing of it by referring to the machine. I made the first drawing of it, I believe, that ever was made.

To the cross inter., marked 9th, he answers: I can say nothing on this question.

JABEZ REYNOLDS.

Notary's certificate.

I, John Kebler, notary public within and for the county of Hamilton, State of Ohio, hereby certify, that I am commissioned, according to law, to act as notary public within the county aforesaid; that the foregoing depositions of Jabez Reynolds and Lawrence Allberger were severally taken, subscribed, and affirmed to before me, at the time and place above named. I further certify, that I am not of counsel or attorney for either of the parties, nor otherwise interested in the event of said suit, and that the said depositions were reduced to writing by myself, each of the two witnesses having been first duly affirmed to speak the truth, the whole truth, and nothing but the truth, under the pains and penalties of perjury. I further certify, that the foregoing deposi-

tions of Jabez Reynolds and Lawrence Allberger were taken in answer to the several direct and cross interrogatories appended, according to the annexed notice.

[L. S.] Witness my hand and seal this 5th day of April, A. D. 1845.

JOHN KEBLER,
Notary Public.

The exhibit marked A, and referred to in the foregoing depositions, is in the words and figures following, to wit:

(See it heretofore copied, page 4.)

The interrogatories returned with the foregoing depositions of the defendants are in the words and figures following, to wit:

United States of America, 8th circuit, Kentucky district, sct:

JAMES WILSON,
ads.
W. W. WOODWORTH, adm'r, and E. V. BUNN.

Interrogatories by defendants.

Interrogatories on the part of the defendant Wilson.

1st. State whether you have seen the patent of W. Woodworth, granted in 1828, and the specifications, and any of the machines put in operation under that patent. If so, when and where have you seen them; and state whether you are a mechanist, and what opportunities you have had of becoming acquainted with the machinery and the principles upon machinery acts.

2d. State whether W. Woodworth's patent is for an improvement on an old machine, or for a new invention; and if for the improvement of an old machine, whether it can be ascertained from the specifications in what the improvement consists; or if for a new invention, whether such new invention consists in a new combination of known mechanical tools, or in the invention of new mechanical tools, in whole or in part; and whether, in your opinion, the specifications are sufficient to enable a mechanist to construct a planing machine under the patent, without the aid of any invention on his own part.

3d. State whether machines upon the same principles as that of W. Woodworth's were or were not in known use and operation before the date of Woodworth's patent in the United States, or some of them; and if so, state when and where you have known them to be in operation and use.

4th. State whether you have or have not seen machines upon the same principles as that of W. Woodworth's, described in books of science, or other works, prior to the date of his patent in 1828; and if so, state in what works, and why, you consider those machines upon the same principles as that of W. Woodworth; and if they differ in principle in any particular, in what particular the difference consists.

5th. State whether you do or do not know that the circular saw to reduce boards, &c., to a given width was in known and in general use in the United States long prior to the date of Woodworth's patent, in

1828; and state further, whether *in* the specifications to Woodworth's patent are sufficiently explicit to enable a mechanist to put up one for use, in connection with the other part of the machine, without the aid of invention on his part.

6th. State whether you know or do not know that Woodworth, in his lifetime, failed to recover, in one or more suits, for a violation of his patent, because of proof made that he was not the inventor of the circular saw for reducing boards, &c., to a given width; and if so, at what time did such failure take place; and whether you do or do not know that W. W. Woodworth, the adm'r and complainant in this court, did or did not know of such failure prior to the 2d day of January, 1843.

7th. State whether you have seen the planing machine invented by Benjamin Bicknell, of the city of Cincinnati, Hamilton county, Ohio, and which said Bicknell, in conjunction with Ebenezer Jenkins, put in operation in Cincinnati some time in the early part of 1843; and if so, state whether said machine is substantially like the planing machine patented to W. Woodworth in 1828; and if so, state in what particular the two machines agree, and in what particular they disagree; and further state in what particular the *principles* of the two machines agree, and in what particular the principles of the two machines disagree.

8th. Examine the drawings now shown you, and state whether they are or are not the drawings of the machine described in the specifications of Woodworth's patent, and in those described in Bicknell's specifications or of Bicknell's machine, and examine the other drawings, and state of what machines they are models.

9th. State any and all other facts and circumstances in your knowledge material to the defence of James Wilson in this case; and be careful and particular to make all your answers full and complete in detail, in order to a fair understanding of all the facts.

GUTHRIE & TYLER,
For Defendants.

Cross inter's by compl't Bunn.

Cross interrogatories by the compl't Bunn to the interrogatories of the def'ts.

2d. interrogatory. If you say that Woodworth's patent is for an improvement on an old machine, state when and where such old machine was, and whose it was, and describe its principles and action. If you state that Woodworth's patent consists only of a new combination of known mechanical principles or tools, state also in what consists the invention of any new machine whatsoever, but in the novel or new application of some mechanical principles before known.

3d. Describe such machine in all its parts, and for what purpose it was used.

5th. State whether, from the specification and drawing accompanying Woodworth's patent, a skilful mechanist could not make the planeing machine as patented by Woodworth.

6th. If you know of such cases, produce the record of such decisions, and state all the evidence given on behalf of the plt'ff and def'ts in such cases, and the names of the witnesses.

7th. Can you produce or make a drawing of the machine alluded to in the interrogatory?

8th. If you say the drawing intended to represent Woodworth's machine is not according to the specification, say in what it is variant, and how you can describe what the drawing should represent according to the specification, when you do not so understand, as you say, the specification, so as to make a machine by it?

9th. State all you in relation to the matters in issue in this case, and every thing material to the plt'ff as well as def'ts.

LOUGHBOROUGH & BROWNE,
For Defendants.

Appeal Bond.

The appeal bond taken in this cause is in the words and figures following, viz:

Know all men by these presents, that we, William W. Woodworth, administrator of William Woodworth, and E. V. Bunn, principles, and William Lyon and John W. Pruett, securities, are jointly and severally held, and firmly bound unto James Wilson, Benjamin Wilson, and Alpheus Wilson, in the just and full sum of five hundred dollars; for the payment of which we bind ourselves and heirs, &c., jointly and severally, firmly by these presents. Signed with our hands, and sealed with our seals, this 7th day of June, 1845.

The condition of the above obligation is such, that whereas, the above bound William W. Woodworth, adm'r, &c., and E. V. Bunn, have prayed for and obtained an appeal from a decree in the 8th circuit court of the United States of America, in and for the Kentucky district, pronounced on the day of June, 1845, in a certain suit in chancery, wherein the said William W. Woodworth, administrator of Wm. Woodworth, and E. V. Bunn were compl'ts, and the said Wilsons were defendants.

Now, if the said William W. Woodworth, administrator of Wm. Woodworth, and E. V. Bunn, shall well and truly prosecute the said appeal with effect, or on failure thereof, well and truly pay all costs and damages which the said Wilsons may incur or may accrue to them by reason of said appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

[SEAL.]
[SEAL.]
JNO. W. PRUETT, [SEAL.]
WM. LYONS. [SEAL.]

United States of America,
Eighth circuit, Kentucky district, sct:

I, John H. Hanna, clerk of the eighth circuit court of the United States of America, in and for the Kentucky district, do hereby certify, that the foregoing one hundred and thirty-nine pages contain a full, true, and complete transcript of the record and proceedings in the suit aforesaid.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this 16th day of October, A. D. 1845.

[SEAL.]

JNO. H. HANNA.

Filed, 1845.